

# **TAX-EXEMPT FOUNDATIONS: THEIR IMPACT ON SMALL BUSINESS**

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## **HEARINGS**

BEFORE

**SUBCOMMITTEE NO. 1  
ON FOUNDATIONS**

**SELECT COMMITTEE ON SMALL BUSINESS  
HOUSE OF REPRESENTATIVES**

**EIGHTY-EIGHTH CONGRESS**

**SECOND SESSION**

PURSUANT TO

**H. Res. 13**

**A RESOLUTION CREATING A SELECT COMMITTEE TO CONDUCT  
STUDIES AND INVESTIGATIONS OF THE PROBLEMS  
OF SMALL BUSINESS**

**WASHINGTON, D.C.**

**JULY 21, 22, 23, AUGUST 10, 31, SEPTEMBER 1 AND 4, 1964**

Printed for the use of the  
Select Committee on Small Business



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-- 1964

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III



## TAX-EXEMPT FOUNDATIONS: THEIR IMPACT ON SMALL BUSINESS

TUESDAY, JULY 21, 1964

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE NO. 1 ON FOUNDATION OF THE  
SELECT COMMITTEE TO CONDUCT STUDIES AND  
INVESTIGATIONS OF THE PROBLEMS OF SMALL BUSINESS,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 10:10 a.m., in room 1301, Longworth House Office Building, Hon. Wright Patman (chairman of the subcommittee) presiding.

Present: Representatives Patman, Roosevelt, and Harvey.

Also present: Representative McCulloch of the full committee; H. A. Olsher, Director of Foundation Studies; John J. Williams, Minority Counsel; and Eugene Loehl, Assistant Minority Counsel.

The CHAIRMAN: The Committee will please come to order.

This is the first session of hearings of Subcommittee No. 1 on the subject of the Federal Government's supervision of tax exempt foundations and charitable trusts.

This morning Mr. Evins, the Chairman of the whole Committee on Small Business and a member of this Subcommittee is unavoidably detained and cannot be here.

Mr. Avery, of Kansas, is likewise detained, and is not here.

We are glad to have the other members of the Committee, Mr. Roosevelt of California, and Mr. Harvey of Indiana.

The foundation is a phenomenon which has "come of age" since 1950. There was a time when a man's status in his community was determined by the number of cars in his garage. Now, his position in the community is based on the number of foundations under his wing. This phenomenon packs a tremendous economic and political wallop which is felt in many areas of our economy. Despite the wide repercussions, the general public has only, in the past two years, become aware of what is actually taking place. From the very beginning of our study, the deep interest of the public has been indicated by thousands of letters from all parts of the country and by the demand for printed copies of our findings. I predict that an informed public will make tax exempt foundations one of the most important issues of our time.

The continuing huge purchases of common stocks by foundations are signaling a change in the location of the economic power in this country. This is a force that can affect the course of our national economy. The power will, in reality, rest in the hands of a relatively small group—the foundation managers.

#### BACKGROUND OF THE HEARINGS

Since 1962, the House Small Business Committee has been engaged in a fact-finding study of the impact of tax exempt foundations and charitable trusts on the nation's economy—dealing in part with foundation-controlled enterprises in competition with taxpaying businessmen.

The object of the study is to determine whether legislation is needed in order to provide effective supervisory controls over such organizations. The study—when it is completed—will provide a base of information on foundations that can be used to formulate positive congressional action.

Information has been gathered from 546 foundations and charitable trusts. To date, three reports have been transmitted by me to the Subcommittee under dates of December 31, 1962, October 16, 1963, and March 20, 1964. The data which have been assembled in the reports present for the first time detailed information on the income, assets, expenditures, etc., of a substantial number of foundations. They permit the study of some important aspects of the foundation field which have hitherto been largely unexplored.

#### EROSION OF THE TAX BASE

Our study provides the Congress with numerous dramatic examples of the ever-increasing erosion of our tax base and the serious problems this creates for tax policy. More and more, the "cream" is slipping out of our tax system as the great fortunes go into tax exempt foundations. Thus, the "skim milk" incomes of average, hard-working families must shoulder an increasing part of the tax burden, both Federal and State.

#### DODGING ESTATE AND INCOME TAXES

The trend to shift the wealth of America's richest families into tax exempt foundations and trusts represents a gigantic loophole in our tax laws. Such organizations have been and are being used, in part, to avoid Federal estate taxes. Thus huge fortunes are kept from being returned to public use for channeling into our economy without limitations.

The late Secretary of the Treasury Mellon used a charitable foundation to avoid estate taxes on a multimillion dollar estate. Of more recent date, the Ford Foundation was used to reduce the taxable estates of Henry Ford and Edsel Ford and to avoid having to sell Ford Motor Company stock to the public in order to meet large estate taxes. Thus the Ford Foundation was given over 90 percent of the equity in the Ford Motor Company.

So substantial parts of the great fortunes of those who have profited by the enormous expansion of American industry have found their way into tax exempt foundations. These foundations have already passed and will continue to pass—by right of inheritance—to the control of heirs or their trustees. This enables a few individuals to control ever-increasing tax exempt wealth.

The progressive development of thousands of foundations through gifts of corporate stock illustrates the increasing flow of formerly taxable income into these cozy tax shelters. Stock acquisitions of the Charles Stewart Mott Foundation, Flint, Michigan, Edward E. Ford Foundation, New York City, W. Alton Jones Foundation, New York City, Phoebe Waterman Foundation, Inc., Philadelphia, Gulf Oil Foundation, Houston, and a host of others provide examples of how millions of dollars of formerly taxable income are now escaping taxation.

#### LACK OF STATISTICS

Treasury has shown no improvement in the matter of statistical data on foundations.

In 1948, the Treasury Department estimated that there were about 10,000 foundations in this country. The Senate Commerce Committee—which was investigating the Textron Trusts—was of the opinion, however, that “nobody knows precisely how many such trusts exist.”

In 1949, the report of the Senate Committee on Interstate and Foreign Commerce on the Textron Trusts, stated as follows:

The committee staff engaged in research to obtain such information as was available concerning charitable trusts as related to industrial enterprises, and were surprised to learn of the scarcity of information available to the public or to the Congress concerning such so-called charitable trusts \* \* \* there is no agency which has been able to obtain comprehensive information concerning the extent of such tax avoidance and industrial investment, and the extent to which such use of trusts gives unfair competitive advantages in the manufacturing field.

It is understood that there are many thousands of such trusts operating throughout the country and yet even the Treasury Department does not know the number or identity of all of the trusts and is ignorant of their financial maneuverings.

Five years later, in 1954, the Reece Committee complained that it was unable to arrive at any accurate estimate of the number of foundations, their income, expenditures, and assets.

At one point, Commissioner Caplin advised us that there were 12,295 tax exempt organizations filing Tax Return Form 990-A during 1952, and 45,124 such organizations filing Form 990-A during the year 1960. Additionally, Commissioner Caplin has informed us that 18,298 new “private” foundations were granted exemption during the years 1954 through 1962.

But, on May 16, 1963, Commissioner Caplin made a speech in Cleveland in which he said that there were “roughly 15,000 actual foundations.”

Now, if we take the 1948 estimate of the Treasury Department—10,000 foundations—and add the 18,298 new foundations, which, according to Commissioner Caplin, were granted tax exemption during the years 1954 through 1962, we come up with a total of 28,298 foundations, not counting the unknown number of foundations that were granted exemption during the years 1949 through 1953.

In all this, one very disquieting fact stands out: The Treasury Department has no more knowledge today, respecting the number of foundations in existence, than it had 15 years ago in 1948. Our findings indicate that there may be countless foundations in operation without the knowledge of the Treasury. In my view, an estimate of 100,000 tax exempt foundations may be far more accurate than 45,000.

## ASSETS HAVE REACHED MASSIVE PROPORTIONS

Our study indicates that (1) tax exempt foundations have reached massive, undreamed of proportions, (2) Certain of them have acquired immense power and position in our economy, and (3) foundation-controlled enterprises possess the money and competitive advantages to eliminate the small businessman. The following are among the statistics cited in support of these statements:

- The 546 foundations under study had aggregate untaxed receipts, including contributions received, of over \$7 billion during the period of 1951 through 1960. Hence, there was a withdrawal of \$7 billion from the reach of the tax collectors for those taxable years. During the one year 1960, their total untaxed receipts were \$1.044 billion as against \$556 million in 1951.

- In 1960, there were 7,213,000 families, including unattached individuals, in the United States who had income of less than \$2,000 before taxes. Their aggregate income was \$8.040 billion, or an average of \$1,114.66 per family. Thus, the \$1.044 billion received by the 546 tax exempt foundations in 1960 was 13 percent of the aggregate income of 7,213,000 American families. In other words, the aggregate receipts of these 546 foundations were equal to the average incomes of 937,000 American families in 1960.

- The \$1.044 billion received by the 546 tax exempt foundations in 1960 was substantially more—in fact, 17 percent more—than the \$864,435,000 combined net operating earnings, after taxes, of the 50 largest banks in the United States.

- The 546 foundations had assets of no less than \$10.3 billion at the end of 1960.

- The financial condition of the 546 foundations, in general, was enviable. Aggregate net worth (total assets less liabilities) was no less than \$9.8 billion at the end of 1960.

At the close of 1960, the net worth of the 546 foundations—\$9.8 billion—was 20 percent greater than the \$7.9 billion capital funds (capital, surplus and undivided profits) of the Nation's 50 biggest commercial banks. The net worth of these foundations was also 22 percent greater than the \$7.7 billion invested capital (capital stock, surplus and retained earnings) of the Nation's 50 largest merchandising firms.

- During the period of 1951 through 1960, the contributions, gifts, grants, scholarships, et cetera, paid out by the 546 foundations total over \$3.4 billion, roughly 50 percent of their aggregate receipts of \$7 billion. They claimed expenses, including administrative and operating expenses, of over \$748 million, 10½ percent of the total receipts.

- The 546 foundations had accumulated (unspent) income of \$902 million at the close of the last accounting period for which they submitted data to the Committee (usually 1960), as against \$271 million at the close of the first accounting period (usually 1951) for which they provided information.

Nonfeasance on the part of Treasury officials has fostered tax-free commercial activities, violations of law and Treasury regulations, and tax avoidance through the device of foundations. Moreover, the Department's indefensible apathy and its archaic procedures have encouraged certain owners of foundations to exploit their tax exempt

status for personal gain and for the benefit of others with whom they are affiliated through stockholdings, joint stock trading accounts, promotion, syndicates, and other financial relations and transactions.

To date, the granting of Federal tax exemption to foundations has been a mere formality. The record proves that, as far as the Treasury is concerned, an organization becomes "charitable" by merely describing itself as such. Once the exemption has been granted, there is little or no check on the foundation's operations. No less than 55 percent of the 546 foundations examined by the Subcommittee failed to comply with certain Treasury regulations during one or more years.

#### CONTROL OF BUSINESSES

In the past two decades numerous business organizations have become affiliated with or merged into so-called charitable foundations. It is evident that control of our industrial and commercial enterprises is to an ever-increasing degree passing into the hands of tax exempt foundations through stock ownership.

One hundred eleven of the 546 foundations under study owned 10 percent or more of at least one class of stock in one or more of 263 different corporations on December 31, 1960. The stock ownership of those 111 foundations ranged from 10 percent to 100 percent, and included many well-known companies such as Ford Motor Company, Great Atlantic and Pacific Tea Company, Eli Lilly and Company, Kellogg Company, Callaway Mills Company, Duke Power Company, and S. S. Kresge Company.

#### STOCK MARKET OPERATIONS

During the period of 1951 through 1960, the 546 foundations showed capital gains of over \$1.4 billion. This figure suggests that many foundations have become a vehicle for trading in securities and dodging the capital gains tax. Additionally, there is considerable evidence that certain foundations have operated as sources of unregulated stock market credit.

Market activity by foundations—with huge, untaxed funds at their disposal—poses some big questions in the light of the 1962 sharp breaks in the market. Were the 546 foundations under study net sellers or buyers? The Subcommittee will have the answer when its study is completed.

What is the impact on small business? Basically, it is that sharp market declines—such as that of 1962, work a hardship on many small companies. Lack of stock financing limits opportunities for such businesses and slows down their expansion plans.

#### A REASSESSMENT IS NEEDED

Tax exemption for foundations needs reassessment in the light of the present times. There is every indication that many tax exempt charitable foundations are being used for purposes not related to charity. The laws of the past are no longer effective. Congress could not envision the gigantic proportions that the foundation business would reach.

On behalf of the Subcommittee, I should like to welcome our first witness, The Honorable Douglas Dillon, Secretary of the Treasury.

Mr. Dillon, I believe you have a prepared statement which you have furnished to us in advance, which we appreciate. You may proceed in your own way, sir. We are delighted to have you.

**TESTIMONY OF THE HONORABLE C. DOUGLAS DILLON, SECRETARY  
OF THE TREASURY**

Secretary DILLON. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate your invitation to testify before this Subcommittee on the important question of tax-exempt charitable foundations. As you know, these foundations play a very significant role in American life. Their effect is felt in all aspects of education, charity, science, medicine, the literary arts and religion. Each year substantial sums are contributed to foundations, and the foundations, in turn, make substantial, annual disbursements on which many people and institutions are vitally dependent.

Because of the importance which we as a nation attach to private philanthropy, we have promoted it by generous provisions for tax exemption. This privilege applies to activities of foundations as well as to the tax deductions which are available to contributors to foundations. Because of this privilege it is healthy, indeed necessary, that the Congress and the Administration periodically re-examine those areas where tax exemption and tax deductions are provided. It is important to make sure that no one is abusing the privilege of tax exemption, and to put an end to such abuses as may be found. For example, study is necessary to determine whether any foundations have been the subject of a misuse which affords unintended or undesirable tax benefits to contributors and others; whether situations exist where the interests of the intended beneficiaries of charitable bounty have been unduly slighted in deference to the financial interests of foundation contributors or those in control of foundations; whether some investment policies of certain foundations may have been geared more to the interests of controlling private parties than to the interests of charity; whether charity has received less than a full dollar of value for every dollar of tax deduction and tax exemption; and whether any foundations have engaged in business activities to the detriment of their primary charitable concern, to the advantage of their contributors and managers, or to the disadvantage of competing private businesses operating without tax exemption.

Both the Congress and the Treasury have studied these problem areas in the past. A major study resulted in important legislation in 1950 when opportunities for self-dealing were restricted and the unrelated business income of tax-exempt foundations was subjected to income tax. The Revenue Act of 1964 further restricted the opportunities for self-dealing in the case of foundations seeking to qualify for unlimited charitable contributions, and those organizations are now required to make substantial disbursements of their income and contributed assets.

It is now 14 years since the major revisions of 1950 were adopted, and it is time to see whether the legislation of that period was adequate to the task of remedying the abuses it was designed to elimi-

nate; whether the legislation needs strengthening, either from a policy or administrative point of view; and whether other abuses have developed since 1950 which require correction by legislative or administrative action.

Both the Senate Finance Committee and the House Ways and Means Committee have requested that the Treasury Department prepare a report on this subject, and your Subcommittee has, of course, already issued reports calling attention to a number of possible problem areas. The Treasury began its current study of foundation problems in 1961. In its early stages the study proceeded with limitations imposed by the priorities given to the Revenue Act of 1962 and the Revenue Act of 1964. However, the study will be completed and our report submitted by the end of this year.

In conjunction with the Treasury's study, in 1963 I appointed an Informal Advisory Committee on Foundations composed of reputable and responsible individuals who are associated with foundations on a full-time, professional basis, lawyers and accountants who have worked in the foundation area in their private practices, and a law professor who has been a scholarly observer of foundations and has written on the subject. The Committee has met on five occasions with Assistant Secretary Surrey, the Tax Legislative Counsel; and others from the Treasury and Internal Revenue Service. The purpose of these meetings was to canvass the views of knowledgeable people on the practices of taxpayers with respect to foundations, on the management, investment and disbursement practices of foundations, and on various alleged abuses and proposed remedies which have been discussed in this Subcommittee's reports and elsewhere. The Treasury found these meetings valuable as a source of informed opinion, but our ultimate conclusions and recommendations will be based on all aspects of our studies and from evidence drawn from varied sources, including, of course, field studies by the Internal Revenue Service and data provided by this Subcommittee.

This Subcommittee's reports contain statistics gleaned from a study of several hundred foundations, including their asset values, receipts, accumulations, and disbursements. The Treasury study will benefit from that information and from updated statistical data based upon an extensive survey of the information returns which foundations have filed on Form 990-A for the year 1962. It will also benefit from the responses to a questionnaire which we are sending to a number of foundations requesting additional statistics and information not available from existing sources. I would like at this point to submit for the record a copy of this questionnaire.

(The questionnaire and covering letter appear as Exhibit 50, page 407.)

Secretary DILLON. Information provided by The Foundation Directory, published by the Russell Sage Foundation, is also being studied. Thus, to the extent available concrete facts and figures will provide the background material for the Treasury's ultimate conclusions and recommendations.

Although policy considerations will be fundamental to the Treasury's ultimate recommendations, and to the Congress' ultimate judgments, each policy question carries with it technical aspects which are important to the overall statutory scheme, to equity and administrative

practicability. Treasury lawyers intend to study these technical matters in conjunction with the staff of the Joint Committee on Internal Revenue Taxation so that the ultimate report will place each conclusion and recommendation in proper perspective, indicating its linkage with related provisions of law and other relevant considerations.

As part of the Treasury's general interest in the foundation area, and as Mr. Caplin will tell you in greater detail, the Internal Revenue Service has, in the last three years, stepped up its program for auditing exempt organization returns. Whereas only approximately 2,000 exempt organization returns per year had been audited before, about 10,000 exempt organization returns were examined in fiscal year 1964. This should bring about more widespread and fuller compliance with existing provisions of law. It will also help us to form judgments as to which abuses can be corrected by the vigorous enforcement of existing law and which require new legislation. In order to provide more meaningful information and to bring to light areas of possible concern, the information return required of foundations was modified recently and is undergoing continued re-evaluation.

I would like to also submit for the record a description of the changes that we have made in the Form 990-A during 1962 and 1963, and also the new change in Form 1023.

The CHAIRMAN. The statements you have with your testimony may be made a part of the record, sir.

(The document appears as Exhibit 51, page 411.)

Secretary DILLON. Thank you, Mr. Chairman.

The scope of existing law is also being determined in litigation. Appropriate cases are being diligently litigated by the Office of the Chief Counsel of the Internal Revenue Service and by the Tax Division of the Justice Department. Court decisions are helping to mark off those areas where vigorous enforcement of existing law will carry out the Congressional objectives from those where new action by the Congress may be necessary. Such litigation tests some of the judgments made in 1950 in light of the years of experience which have passed since then. A vigorous litigation policy is a continuous necessity if the effects of legislation are to be reviewed on an empirical basis. This Administration has pursued such a policy where warranted.

Both the administrative and litigation experience since 1950 will shed light on the propriety of the sanctions which the law now provides in cases of abuse and outright violation of law. The study will examine whether, in some cases, sanctions are inadequate or misdirected, and whether in other cases sanctions are so stringent and automatic that courts may be reluctant to hold them applicable.

#### CONCLUSION

Privately administered philanthropy has a vital, affirmative contribution to make to a dynamic, democratic society like ours. Ours is a pluralistic society composed of people and groups with diverse, competing interests and ideas; it is dependent on a free market place for these ideas and for qualified people to experiment with them. Foundations directed by private individuals, not by government, have made great contributions in education, in science, in medicine, and in fostering an environment for the creation of ideas, for their



debate, and for experiment and innovation. Government has contributed to this healthy environment in many ways, not the least of which is by providing tax benefits. This is a cost which the Congress has always considered worth incurring. It is essential, however, that the cost be a measured one—that abuses and inequitable tax advantages claimed under the shelter of provisions of law designed to aid philanthropy be ferreted out and eliminated. The 1950 amendments were expected to eliminate abuses and undesirable private benefit cases such as those involving self-dealing between a contributor and the foundation which he controls. To the extent that they may not have proved fully effective, they must be strengthened. The study now underway will explore this type of problem along with others. It is our hope that we will be able to devise recommendations which will eliminate abuses and make for efficient, even-handed administration—this without detracting from the policy and provisions of law which encourage society's realization of the true values of modern philanthropy.

The Treasury's study is proceeding with care and impartiality. Until it is concluded and our report is submitted to the competent legislative committees, it would be neither desirable nor proper for me to discuss in any detail particular issues or recommendations which may be under consideration. You may be sure, however, that all available data and views, including those set forth in this Subcommittee's report, are being given our utmost attention.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Secretary.

Before asking questions myself, I wonder if members of the Committee would like to make a general statement?

Mr. HARVEY, would you like to make a statement?

Mr. HARVEY. Mr. Chairman, I think in this instance I would only like to make a general statement to the effect that I appreciate the fact that the Secretary and the Department have undertaken a study, a re-study, I probably should say, of the problem, and I certainly hope that a more equitable and a more direct supervision of our foundations will be a result.

I want to say, first of all, on my own behalf, that I certainly am not opposed to foundations, and I know that a great many of them have rendered service in the fields which you, Mr. Secretary, have indicated. Their justification certainly is adequately set forth in your statement, and I concur in it.

I feel that that is, without attempting to speak for the rest of the members, I think there is a general consensus that the Committee itself is not here necessarily just to try to pillory the foundations, but to try to help the executive branch to more carefully carry out the provisions of the law.

Thank you, Mr. Chairman.

The CHAIRMAN. Our investigation covers privately-controlled foundations.

Mr. ROOSEVELT?

Mr. ROOSEVELT. Thank you, Mr. Chairman. Mr. Secretary, I agree with the statements you have made and equally with your summation. I concur that private foundations have made a very distinct contribution in many fields to the progress of our civilization and of our national life.

I would like it distinctly understood that even though considerable reports and even though in the Chairman's statement itself there are certain foundations or individuals which are named, as of now I hope that this singling out of certain people will not be taken as an indication of any particular fault or criticism of their actions. It may well be that what they have done is allowable by law and the law may be changed in view of the light of experience which has happened.

But I think it would be going pretty far if they have done something in a legal and allowable way, to criticize them for doing it if the law allows them to do it.

But it is our job, if good public policy now determines that the law should be changed, to change the law, but not at the price of holding them up to any adverse criticism, because I think this would be unfair all down the line.

On the other hand, where individuals or foundations have used their opportunities for private gain clearly beyond the law, that I think should be exposed and proper steps taken to see that, Number One, if it is punishable it is punished; and, Number Two, if it can be prevented, that it is prevented.

I hope that this Committee will operate on that basis and in that spirit.

I, for one, will be happy to cooperate with them.

The CHAIRMAN. The ranking minority member of the Committee on Small Business, the Honorable William McCulloch, is with us this morning.

Would you like to make a statement, Judge McCulloch?

Mr. McCULLOCH. Yes, I would, Mr. Chairman.

While I am not a member of this Subcommittee officially, I am pleased that I have the opportunity to sit in as my time will allow.

Mr. Secretary, I am particularly impressed by that part in the body of your statement which begins with the third sentence in the second paragraph of your statement, as well as with your conclusion, in view of the fact that most of the foundations are good foundations, and have served a great cause in this country, I certainly hope that the commitment made both in the body of your statement as well as in the conclusion is implemented by both the administration and by the Congress so far as it is necessary.

I certainly think that there is a time for a real objective study of this field, and I am sure that this Committee or any other Committee of the Congress which undertakes it will have the full cooperation of your department.

(Discussion off the record.)

The CHAIRMAN. We have issued three reports as indicated. Has the Treasury found our studies, as reported in these reports, useful, Mr. Secretary?

Secretary DILLON. Oh, I think indeed we have, and I would like to express the hope—I understand the Committee is still continuing with its work, because this is a complex and difficult and many-faceted subject—that the Committee could find it possible to complete its work by the end of the year, so that all of its thinking and studies will be available for the tax-writing committees, the Ways and Means Committee of the House in the first instance, when they consider this subject next year.

The CHAIRMAN. We have three reports, about a thousand pages in all. This is the first one, here is the second one, and the third one.

I will state this, that our Committee is very proud of the fact that out of the thousands and tens of thousands of statements of fact and figures, not one fact has been challenged successfully. We are very proud of that. This is a tribute to our staff and Mr. Olsher, in particular, who had charge of the work.

I notice you state "10,000 organization returns were examined in fiscal year 1964." By exempt organizations you are referring to all types of tax exempt organizations, not just foundations, is that correct?

Secretary DILLON. That is correct.

The CHAIRMAN. Were those examinations field audits or desk examinations?

Secretary DILLON. I would have to refer that to the Internal Revenue Service, Mr. Caplin and Mr. Harding, who will be here tomorrow. I do know they took some 3 to 4 days work on the average, so they were fairly complete audits, and I presume most of them were field audits, for that reason.

The CHAIRMAN. How many foundations had field audits in fiscal year 1964?

Secretary DILLON. You will have to ask Mr. Caplin that.

The CHAIRMAN. You may be interested in knowing that, by letter of February 28, 1964, Commissioner Caplin informed us that—of 546 foundations under study by this Subcommittee—only "115 examinations were completed in 1963."

Last September Mr. Surrey informed me that this Subcommittee would have a report of Treasury recommendations "in a couple of months." What has happened to that report, Mr. Dillon?

Secretary DILLON. We had originally thought we might be able to suggest some new legislation earlier, but we found that we were not able to do it. We have been consulting continually with the tax-writing committees, and they were not in a position to consider any such recommendations this year because they were otherwise fully engaged, and they asked us to push our study in greater depth and have it ready for the end of the year, so they could consider the matter next year. That is what we are doing.

The CHAIRMAN. Our study indicates that a wide variety of assets—which formerly produced taxable income for the Treasury—are finding their way into tax-exempt foundations and thus escaping taxation. Such assets include securities, art, copyrights to music, movies, and theatrical production companies, among many others.

Are you concerned about this ever-increasing drift of wealth into such organizations, since it represents a shift of wealth which is eroding our tax base and increasing the tax burden for people who do pay taxes?

What measures do you propose for halting this erosion of our tax base, Mr. Dillon?

Secretary DILLON. We haven't so far proposed any measures, and I doubt if we will, to end the tax exempt privilege for private philanthropy, because the Congress has always made it very clear that they wished to favor private philanthropy, including the area of foundations. In the 1950 law they did not accept the full sweep of the Treas-

ury recommendations, and, although they tightened up the statutory rules regarding foundations, they did so to a considerably lesser degree than had been recommended by the Treasury.

We certainly feel that the definite desire of the majority of the Congress is to continue the tax-exempt privilege for private charity, including foundations, and as long as the foundations are operated properly, I don't think we will make any recommendation to end their exemption.

We do think the problem is one of curing abuses which may have developed, and we are sure some of them have. Your reports have pointed to some specific abuses, but we think there are a good many others that will develop as a result of our study. We would expect and hope that there would be a revision of the tax laws regarding foundations next year which would give the country confidence that there were no longer any opportunities for abuses in this field either in the form of self-dealing or in the form of unfair business competition which you are particularly interested in.

I think that area needs considerable study and clarification. In general, that has been our attitude.

Generally, we have not felt that we should try to restrict the area of charitable contributions, either of the foundations or the thousands of other exempt organizations which can currently receive deductible contributions.

The CHAIRMAN. I would like for you to answer specifically this one question—

Secretary DILLON. Yes.

The CHAIRMAN (continuing). Which I believe you overlooked since I asked two at one time. This question is, are you concerned about this ever-increasing drift of wealth into such organizations, since it represents a shift of wealth which is eroding our tax base and increasing the tax burden for people who do pay taxes?

Secretary DILLON. No, I am not, Mr. Chairman, since income if it is properly used by these foundations is being used to support charitable purposes that should be supported, and which, if not supported privately, probably would either have to be supported by the Government or abandoned. I think either of those would be something that we would not like to see. So I don't think that we are concerned about this because of the erosion of the tax base, although it does mean that we have less money than we otherwise would have if these gifts to charity had not been made.

The CHAIRMAN. Mr. Roosevelt wanted to ask a question.

Mr. ROOSEVELT. Mr. Secretary, the Chairman's question implies that there is a considerable additional income or gifts to foundations or charitable organizations. How does that increase compare to the general increase of the national income? Do the figures show that it is a remarkable increase, because it would seem from what you have said that you would not be worried about it if a load was being taken off Government expense.

Secretary DILLON. Yes.

Mr. ROOSEVELT. Which this would take the place of, so that I gather your answer would be kind of a balance. But, on the other hand, I would be interested in knowing whether it is really as much out of balance as is implied, considering the growth of general income in the country.

Secretary DILLON. I will have much better figures on that when we complete our statistical study, but my impression is that the growth of assets of foundations has generally not been much greater, if any greater, than the growth of the gross national product, with the possible exception of one very large foundation, the largest foundation—the Ford Foundation—which when it was created probably changed the statistics. But from after that and before that I have seen nothing to indicate that the growth in the assets of the foundations, I am not talking about numbers of them, the total assets which is the tax base, is any larger than the growth in our gross national product.

Mr. ROOSEVELT. It certainly would be a field, Mr. Secretary, to get more specific figures on. Then I think it would be very helpful if we could have a summary somewhere as to your impression of where the results of these foundations have relieved the Federal Government of work which otherwise they would have to do.

Secretary DILLON. I would like to say one thing in connection with this. The Chairman is quite right in saying that the Treasury does not know how many foundations there are. Because of the growth of this area, I think that is knowledge that we should have, and we are in the process of acquiring it.

The reason that it was not originally available is that the original laws, in fact the present laws, do not classify foundations as such. They talk about exempt organizations, and there are some 17 different categories of these. What was always done was all the exempt organizations were kept in one area. They weren't divided into their various types.

Now, with the advent of electronic data equipment the Internal Revenue Service is in the process of asking all exempt organizations, which are many hundreds of thousands, for statistical information which will enable classification into foundations, fraternal orders, religious orders, or whatever it is, and they intend to put all this information on a master electronic tape which will be kept up to date currently so we will have that information. But that will not be completed for about a year.

At that time, we should know fairly exactly how many foundations there are, and as new ones are formed we will have a running catalog of them, and will be able to check up on them as a separate group to the extent we or Congress or anyone else wishes to do, and I think that that is an important matter which is being now pushed vigorously.

The CHAIRMAN. I would like to ask Mr. Olsher to continue.

Mr. OLSHER. Let me give you a few examples of what is taking place. The development of thousands of foundation tax shelters through gifts of corporate stock has been treated at some length in our three reports to the Subcommittee. Stock acquisitions of the Charles Stewart Mott Foundation, Flint, Michigan, Edward E. Ford Foundation, New York City, W. Alton Jones Foundation, New York City, Phoebe Waterman Foundation, Philadelphia, Gulf Oil Foundation, Houston, and a host of others provide examples of how millions of dollars of formerly taxable income are now escaping taxation.

Now, let me give you a little additional information which did not appear in our printed reports because we lacked the information prior to publication date.

The Rodgers and Hammerstein Foundation, of New York City, was organized on May 29, 1952 by Richard Rodgers and Oscar Hammer-

stein, II. Its assets were nil at date of organization. The first assets acquired by the Foundation were copyrights in 1952. On September 16, 1952 the donors, Richard Rodgers and Oscar Hammerstein II, each donated 50 percent of the copyright to a song, "There's Music In You" valued at \$40,000. From fiscal years ending April 30, 1953 through April 30, 1964 this copyright produced \$20,449.48 tax free income for the Foundation. On October 21, 1952 Messrs Rodgers and Hammerstein each contributed to the Foundation 50 percent of the copyright to a song, "Happy Christmas Little Friend" valued at \$45,000. From fiscal years ending April 30, 1953 through April 30, 1964 this copyright produced \$27,825.29 tax free income for the Foundation. On January 7, 1960 Messrs Rodgers and Hammerstein each contributed to the Foundation 50 percent of the copyright to a musical play "Flower Drum Song" valued at \$300,000. From fiscal years ending April 30, 1960 through April 30, 1964 the Foundation received \$285,216.92 tax free income from this copyright.

The Alan Jay Lerner Foundation, of New York City, was organized on June 22, 1956, with assets of \$26,000. From December 1958 through December 1962, Mr. Alan Jay Lerner contributed to the Foundation shares of Allern Management Corporation, a theatrical production company, as follows: 108 common shares, Class B stock and 3,910 shares of 4 percent Cumulative Preferred stock. As of August 19, 1963, Allern Management Corporation owned various theatrical and musical rights to the productions "Brigadoon", "Paint Your Wagon", and "Gigi", and a 50 percent share of a corporation which owns various musical rights. Allern Management Corporation also owns marketable securities. These rights will exist until approximately the year 2000 and are expected to produce income during this period of time.

On November 30, 1959, the Foundation owned 27 percent of the outstanding common Class B stock with an equity of \$253,987.73 in the common Class B stock and an equity of \$63,496.93 in the common Class A stock. These Class B shares were cancelled as of December 30, 1959 and exchanged for 580 shares of 4 percent Cumulative Preferred stock. On November 30, 1963 the Foundation owned \$349,000 of the \$555,000 total preferred stock outstanding, and its equity in the common Class A stock was \$645,000.

During fiscal years ending May 31, 1959, through May 31, 1963, the Alan Jay Lerner Foundation received \$42,329.60 income from Allern Management Corporation.

The Samuel Goldwyn Foundation, of Hollywood, California, was organized on February 5, 1947. Its assets as of date of organization are unknown to us. However, on December 31, 1947 its assets were valued at \$454,197.97, including Mr. Samuel Goldwyn's rights, title and interest in the three movies "The Little Foxes," "Ball of Fire," and "They Got Me Covered." Mr. Goldwyn had contributed these rights to the Foundation March 24, 1947, valued at \$200,000, \$175,000, and \$150,000, respectively.

On April 21, 1950 Mr. Samuel Goldwyn and Mrs. Frances Goldwyn donated to the Foundation undivided interests (68 percent to 75 percent) in four additional movies, valued at \$1,025,000. Titles of the movies are unknown to us.

On April 1, 1951, the Foundation sold to Samuel Goldwyn Productions, Inc. its interest in the seven released photoplays for an amount

equal to 82½ percent of the purchaser's share of the net receipts from the pictures to March 31, 1976, payable as follows: (1) \$250,000 in cash and \$250,000 in notes upon execution of the agreement, and (2) the balance in semi-annual installments after the sum of \$500,000 has been received and retained by the purchaser out of 82½ percent of the net receipts; the agreement of sale also provides that the Foundation will not be obligated to return any part of the \$500,000 advance payment in the event that the amount of 82½ percent of the net receipts during the period does not equal that sum. At the date of sale the pictures were carried at \$627,020.19, representing \$1,025,000 fair value of the pictures when acquired by gift in 1947 and 1950 less subsequent receipts of \$397,979.81; the \$500,000 advance payment from the sale was applied in reduction of the carrying value leaving a balance of \$127,020.19 to be recovered out of future receipts from the pictures.

On December 18, 1956, and October 27, 1959, Mr. Samuel Goldwyn donated to the Foundation 19/80ths interest in studio land and buildings valued at \$453,815.96. On December 23, 1959 the Foundation sold to Samuel Goldwyn Productions (a limited partnership in which Samuel Goldwyn was a general partner) its interest in the studio land and buildings for \$500,000 payable \$100,000 in cash and \$400,000 in a note.

With respect to the acquisitions of stock by the Edward E. Ford Foundation, our earlier findings have now been supplemented by additional information which had not been furnished to us previously. It goes as follows.

The assets of the Edward E. Ford Foundation, of New York City, consisted solely of 100 shares of International Business Machines Corporation capital stock valued at \$30,000 on December 12, 1957 (date of trust agreement). A few years later, on April 12, 1961, Mr. Edward E. Ford, of New York City, transferred to the Foundation 10,000 shares of International Business Machines Corporation capital stock valued at over \$7 million. Shortly thereafter (April 21, 1961-June 7, 1961), the Foundation sold the IBM shares for \$7,137,597 showing a capital gain of \$137,614. Hence, on December 31, 1963, the Foundation's assets were valued at over \$16 million, based on market value.

Mr. Ford had acquired the IBM shares on May 24, 1948 (date of death of his father). His cost basis for personal income tax purposes was \$212,955. Thus, if Mr. Ford had sold the shares on April 12, 1961, instead of transferring them to his foundation, he would have paid a capital gains tax on a profit of over \$6.7 million. The Foundation, of course, pays no tax, including capital gains tax.

Moreover, Mr. Ford undoubtedly took his maximum charitable deduction on his 1961 personal income tax for contributing the shares to the foundation.

Mr. Ford died two years later, in March 1963. A few months later, the foundation received \$7.9 million from his estate, including 10,000 additional shares of IBM stock valued at \$4.3 million.

The Edward E. Ford Foundation had total gross income of \$687,33 in 1958. During 1963, its tax-free income had jumped to \$357,652.

So, in these transactions the Treasury is the loser on the donors' charitable deductions, on their avoidance of capital gains tax and estate taxes, and on the once taxable income which now goes to the tax exempt foundations.

Our analysis of the Alfred I. duPont Estate and its affiliate, The Nemours Foundation of Jacksonville, Florida, lays bare for the first time the detailed anatomy of one of America's great fortunes and how it will one day slip away forever from the payment of income taxes.

The Estate's principal beneficiary is Mrs. Jessie Ball duPont, age 80, widow of the late Alfred I. duPont. During the 13 years 1951 through 1963, the Estate paid to Mrs. duPont taxable income totaling \$67.4 million out of \$83.9 million total income received by the Estate. Payments by the Estate to Mrs. duPont in 1963 alone totaled \$8.5 million. Mrs. duPont paid a Federal income tax of \$4,832,664 in 1963. On the death of Mrs. duPont, the taxable income now paid to her will end. Instead, that major part of the duPont Estate's disbursements will then go to its affiliate, the tax exempt Nemours Foundation, which, of course, pays no income tax.

The CHAIRMAN. Mr. Secretary, the Federal courts have repeatedly declared that regulations issued by the Secretary of the Treasury, when fairly within the scope of his jurisdiction, have the force of law. Is that correct?

Secretary DILLON. I understand it is, yes.

The CHAIRMAN. Does the fact that foundations are exempt from taxation mean that they are exempt from other Federal laws?

Secretary DILLON. No, I should think not.

The CHAIRMAN. Is it the Treasury's duty to be alert to all possible violations of law?

Secretary DILLON. Our primary duty, of course, is to be alert to violations of the tax laws.<sup>1</sup>

The CHAIRMAN. In your view has the present law, as it applies to foundations, been properly enforced?

Secretary DILLON. Yes, I think it has in general. I do think there were certain areas that have needed much more strict enforcement, and, of course, we are moving in that direction.

One of the things that is noticeable, at least in some of the cases that were read by Mr. Olsher, is the fact that two things happened. There may have been some contributions of property that were valued at more than they should have been based on the income that was received from them. We changed the Form 990-A in 1962 so as to require for the first time that organizations reporting the value of contributions they receive also indicate whether a gift was in cash or not. When it is in property, that gives us an opportunity to look at it a little more carefully to be sure that it was properly valued. Prior to 1962 there was no such requirement, so only the value of the gift was listed, and it wasn't stated as to what it was.

Also, there is this question of self-dealing with foundations. My own personal feelings is in consonance with recommendations of the Treasury in 1950 to the Congress, which the Congress didn't see fit to accept, that there should be a prohibition on dealings between a foundation and its donor or donor controlled corporations that is absolute. The law does not provide that now. It provides merely that there should be a reasonable consideration, and in the case of

<sup>1</sup> Secretary Dillon agreed that it is the Treasury's duty to be alert to all possible violations of law. However, at a later date when the Secretary reviewed the transcript, he changed his earlier answer by stating "Our primary duty, of course, is to be alert to violations of the tax laws."



these sorts of transactions where you are dealing with real estate, where you are dealing with copyrights, where you are dealing with the values of such things as movies, I imagine it is pretty hard to get a fair value and to justify it.

I presume those transactions were all handled by lawyers who knew what they were doing, and I think that it may well be that they were squarely within the present law. But that is one of the things that we are looking into very carefully and will probably be the subject of some recommendations this fall.

The CHAIRMAN. Mr. Harvey?

Mr. HARVEY. Mr. Chairman, I wonder if you would yield.

The CHAIRMAN. Certainly, sir.

Mr. HARVEY. It has come to my attention in relation to this very subject on which you have commented, that there is a tendency on the part of the few large foundations which reports I have studied in some depth, that their holdings which may have recently been a solid block of a given corporation's stock, and that the managements of the foundations have undertaken to broaden the base. In other words, take Ford, for example. Instead of having all their eggs in the one basket, they have attempted to spread out and exchange stock for the holdings in other major corporations.

I think this is not only a good move from the standpoint of the financial safety of the funds income, but also from the standpoint of dissipating any claim that could rightfully be made that the foundation officials have used or are in a position to use their power ruthlessly or possibly if not ruthlessly, at least unfairly or improperly.

Now, I am sure you have given this same subject a good deal of observation and study. Is there any tendency on your part to believe that this is a growing and common practice among other foundations?

Secretary DILLON. Well, I certainly agree with you that among the larger ones that has become more or less publicly controlled, if they had started with a large block of one particular stock, there has been a tendency to sell that stock gradually in the market, and diversify their assets. It also raises the question whether owning a controlling interest in a business corporation places the foundation into business activity not fully consistent with its operation as a charity.

This whole question that is raised here is one that is quite complex and is under study. It bears on the provisions against unrelated business income which, as presently written, are clear when certain exempt organizations are running a business. But if that exempt organization incorporates the business and owns the shares of the corporation, then it no longer applies, because it merely gets the dividends from the corporation that is running a business. Now, there is a question whether that still doesn't represent some form of unfair competition with other private businesses that are not owned 100 percent by a charity. I don't know. We are looking into that. This is not something that is limited by any means to foundations. It applies to many other forms of exempt organizations. In fact, showing the interest in this in the way the Congress looks at it, Congress has just passed a special law allowing a labor union exemption from this law, and allowing them to conduct an associated unrelated business without taxation. That was passed unanimously, I think, in both Houses of the Congress.

Mr. HARVEY. Has your policy been with regard to this particular tendency of which I have spoken, to approve it or to take a non-committal attitude or to encourage it?

Secretary DILLON. No, we have not been in a position to do anything ourselves because it is clearly within the law as presently written. We are studying this question, as I said, to see whether or not legislation is in order to cover situations where businesses are either wholly owned or effectively controlled by exempt organizations, and we haven't yet reached any final conclusion on that, but we will before the end of the year.

Mr. HARVEY. In other words, until this date you have not taken any position officially with regard to this particular question that I pose?

Secretary DILLON. With regard to the ownership of substantial interests or controlling interests in companies by exempt organizations we have not taken any position, because, in the first place, this was carefully studied by the Congress in 1950, and they clearly decided they did not want to interfere with this.

Now, as we have said, 14 years have passed. It is a good time to look again. There has been a growth in exempt organizations, and we are taking another good look at this.

Mr. HARVEY. If you will bear with me for just one more question, Mr. Chairman, might I ask this particular question then, Mr. Secretary:

Do you as a gentleman who has had a great deal of experience in business and the investment field believe that the Congress should, if we recommend legislation, include a recommendation to this effect?

Secretary DILLON. Well, although I want to have a chance to view all the evidence when it is in, I am inclined to think that for an exempt organization or a foundation to run a business, whether it is run as an unrelated business or it is run as a business that is substantially owned and controlled so it has the responsibility for running it, is something that is probably not entirely desirable. It means that those who run the foundation, instead of devoting their time entirely to charitable purposes, have to devote a very great deal of their time to seeing that the business is operated properly. I think from that point of view there is something wanting in allowing that sort of situation.

Another thing that is very important, which we have not yet been able to get adequate information on to form any opinion, is whether this does lead to unfair competition with other businesses, and as we develop information on that, I think that will be very important in what the final recommendation will be.

Certainly any views that this Committee might have in this area would be very much of interest.

Mr. HARVEY. From your statement, then, may I infer that you would make a distinction so far as this particular point is concerned, between foundations that operate for charitable purposes, and other tax exempt organizations?

Secretary DILLON. It might be, but I think that is a very difficult line to draw. That is one of the reasons we are not prepared as yet to make a recommendation here. I am not at all sure that the line should be drawn there, and that it shouldn't be drawn somewhere else where

it would include all exempt organizations, as least as far as certain types of businesses or certain types of activity are concerned.

Mr. HARVEY. I am sorry you don't have a direct answer for that.

Secretary DILLON. It is an important question, but it is too complex. We just haven't reached a conclusion.

I think it is easier to reach it on foundations than it is on the others.

So we may want to reach further into the exempt organization field than merely foundations.

That is all I am trying to indicate.

Mr. HARVEY. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Roosevelt, you say you want to ask a question?

Mr. ROOSEVELT. Yes, Mr. Chairman.

I have a question, but first I want to say, Mr. Secretary, I hope you will look very carefully and come up with a definite recommendation as to the competitive aspect of a business whose income is non-taxable, not only from the point of view of good policy competition but from the point of view of the Treasury. It seems to me that if I give IBM stock, which I will not be giving, I don't have any, to a foundation, the value of that stock can be immediately liquidated by the foundation and can be put into non-competitive areas, such as Government bonds, which would remove it completely from the competitive category.

The question I have deals with Mr. Olsher's statement which might reveal what you call—I don't mean it as a criticism but which might reveal—a self-dealing where a donor gave to a foundation and the foundation then sells back to something the donor has an interest in, if it isn't a direct sale to him. In those instances is there anything in the present law which requires the Treasury of the Internal Revenue to review those specific cases of what for lack of a better term we now call self-dealing?

Secretary DILLON. No, because there is absolute prohibition of them in the law. This was fully debated in 1950 when the Treasury recommended it be absolutely prohibited, and the Congress decided not to do it. Congress, instead, prohibited self-dealing when there was not a reasonable price paid, a full price, an adequate price paid. So it is really a question of whether the price paid is adequate or not.

Mr. ROOSEVELT. Who reviews it to make sure that the price paid in self-dealing cases is adequate?

Secretary DILLON. That should be reviewed, if it is large, by the Internal Revenue Service. There is a question, of course, of manpower requirements in the Revenue Service. This is a question of judgment. We could use a great many more revenue agents than we have. It is a matter of record that the Congress has consistently refused to appropriate the funds that Treasury has requested for the Revenue agents that are necessary to do the job, and while the Revenue Service has increased in size, it hasn't increased as rapidly as we felt was necessary to do an adequate auditing job. So that is one reason why auditing may not have been adequate.

I am perfectly ready to concede that as the situation was in the past, there were very few audits, and the general likelihood was that a situation like these transactions that were mentioned, many of these transactions mentioned by Mr. Olsher, would not have been audited.

A greater amount of manpower should be put on these organizations, and, as this has developed, that is exactly what has happened now, when the number of audits has been multiplied by five, which would naturally bring to light more of these sort of cases.

I think the situation now is rapidly changing and there will be a much greater audit coverage by the Internal Revenue Service.

Mr. ROOSEVELT. Can the Treasury Department force a repurchase by an interested party from a foundation? For instance, can it force him to pay more for it if it is found to be inadequate? What is the remedy today, or the penalty?

Secretary DILLON. In a case in which a donor purchases property from his foundation for less than its fair value, there is no provision in the Federal tax law which allows the Internal Revenue Service to force the donor to pay the difference between the purchase price and the fair market value of the property. In all likelihood, however, such a transaction would be a prohibited transaction, the penalty for which is loss of the foundation's exemption. That is one area I mentioned the need to study, where the penalties may be too strict. For example, the 1950 law attempted to attack the area of unreasonable accumulation. We said that accumulations should not be unreasonable in foundations. The only penalty for that, is cancellation of the tax exempt privilege of the foundation. As a result, the courts have been very reluctant to ever impose that penalty which presumably they found too strong, so the Treasury has been eminently unsuccessful in legal cases in the courts in this area. We think some sort of a different penalty there, maybe a penalty to tax certain accumulations that are not distributed, would be much more likely to be effective than the present situation. This may apply in this area that you are talking of, too.

Mr. ROOSEVELT. Mr. Secretary, I think it would be very helpful to the Committee, too, if you could give us specifically what are the penalties.

Secretary DILLON. I will be glad to.

Mr. ROOSEVELT. The penalties for improper transactions between interested parties.

Secretary DILLON. I will be glad to do that as to what is improper, plus the exact definition of what that is.

The CHAIRMAN. Insert them in the record at this point, please, sir. (The information referred to follows:)

Section 503(c) of existing law prohibits a foundation from:

- (1) lending any part of its income or corpus, without the receipt of *adequate* security and a *reasonable* rate of interest, to;
  - (2) paying any compensation, in excess of a *reasonable* allowance for salaries or other compensation for personal services actually rendered, to;
  - (3) making any part of its services available on a preferential basis to;
  - (4) making any *substantial* purchase of securities or other property, for more than *adequate* consideration in money or money's worth, from;
  - (5) selling any *substantial* part of its securities or other property, for less than *adequate* consideration in money or money's worth, to; or
  - (6) engaging in any other transaction which results in a *substantial* diversion of its income or corpus to the donor, his family, or a corporation in which the donor, directly or indirectly, owns 50 percent or more of the stock.
- If a foundation does lend its corpus to the donor without receiving adequate security and a reasonable rate of interest (or engages in any of the other transactions noted above) the Code generally provides that the foundation's exemption

shall be revoked only for taxable years after the year in which it is notified that it has engaged in a prohibited transaction. However, if the foundation entered into the transaction with the purpose of diverting corpus or income from its exempt purpose, and such a transaction involved a substantial part of its corpus or income, the Code provides that the denial of exemption shall be effective as of the year in which the prohibited transaction took place.

With the exception of the revocation of the foundation's exempt status just described, the only sanction which is available under current law is the possible disallowance of deductions for gifts which it receives. However, section 503(c) of the Code, in effect, does not generally disallow the donor's deduction for gifts to the foundation until the foundation has lost its exempt status. Thus, as explained above, unless the prohibited transaction was entered into for the purpose of diverting a substantial part of the foundation's corpus or income from an exempt purpose, the donor's deduction can not be denied even for the year in which the prohibited transaction took place, even if the donor was a party to the prohibited transaction. However, if the Service can establish that the purpose of the prohibited transaction was to divert the foundation's corpus or income from an exempt purpose, and such a transaction involves a substantial part of the foundation's corpus or income, the Code provides that the deduction claimed by a donor who is a party to the prohibited transaction, such as a lender who does not provide adequate security, will be disallowed, even though the contribution may have been made in years prior to the prohibited transaction. However, the disallowance of the deduction for contributions made in years prior to the prohibited transaction can only be made where it can be shown that the contribution in question was made for the purpose of allowing the organization to engage in such prohibited transactions.

The CHAIRMAN. Do you agree, Mr. Secretary, that public reporting of a foundation's activities can operate as a "control"?

Secretary DILLON. We think it is very helpful, and I think that what this Committee pointed out in that area early in the game was very useful, and, as you know, we have changed the Form 990-A and the regulations regarding it, so that practically all information thereon except only the names and the list of contributors is now available publicly, and we think that is a great advantage.

The CHAIRMAN. Would you recommend that disclosure of the operations of foundations be made more complete, and that the public should be given more ready access to more information?

Secretary DILLON. I think that we have taken a very substantial step with the new information on 990-A. Whether we have to go still further or not is something I don't have a final opinion on. I think that most everything is there, but certainly as far as large foundations are concerned, I see no reason why there shouldn't be the fullest publicity. Certainly most of the large ones, I think, do put out reports that are fairly complete as to what their transactions are. But in the smaller foundations that may not be the case.

The CHAIRMAN. Would you agree, Mr. Secretary, that the full content of foundation tax returns should be open to public inspection?

Secretary DILLON. Under the present law we feel the names and amounts of individual contributions are not something that should be open, that can be open to public inspection. Everything else is. I don't know whether that is a very significant item or not. Private tax returns have always been protected. We are running up against a different subject here, which is the protection of the private return which Congress and the Treasury have always been very jealous of, and I personally doubt that the Congress would want to make public the amount that private individuals in a given year gave in contributions to a foundation or elsewhere.

The CHAIRMAN. I do not agree that your illustrations are comparable, because in the case of foundations you are dealing with public money, money that would otherwise go to the Treasury. Don't you think there is a difference there, that they should be open to public inspection?

Secretary DILLON. I don't think all of the money would otherwise go to the Treasury. The individual, if he wants to give it away could give it not to a foundation but could give it to a college and then it wouldn't go to the Treasury. And also, the corpus wouldn't necessarily go to the Treasury. So I am not certain that that follows on gifts.

If a man has to make public his gift to a foundation, should he make public his gift to a university or to a church or anything else? I am not just certain about that. I don't see particularly that he should.

The CHAIRMAN. Would you personally agree that the full content of foundation tax returns should be open to public inspection?

Secretary DILLON. I personally agree that there has been a great advance in the number of foundations, and I see no reason why a foundation shouldn't operate under the glare of publicity. That is one of the best things to prevent any actions that are not proper. All I am saying is that when you get into the one specific field of the amounts of contributions by specific, named individuals, we are coming to another area which Congress and the Treasury have always been very jealous of protecting, and that is the private transactions of individuals as shown in their income tax returns.

The CHAIRMAN. In your view, Mr. Secretary, should the names and addresses of donors to a foundation be open to public inspection?

Secretary DILLON. I think it quite proper that the names and addresses of the original creators of a foundation should be made public at the time the foundation receives its tax exemption.<sup>2</sup>

The CHAIRMAN. They should be. In your view, should all matters relating to the granting or denial of tax exemption, as well as revocations and penalties, be made public?

Secretary DILLON. I don't see why not.

The CHAIRMAN. You don't see why not?

Secretary DILLON. No.

The CHAIRMAN. You favor it?

Secretary DILLON. Yes. I would not object to public disclosure with respect to a foundation's application for exempt status or the statutory grounds upon which a foundation's exemption was revoked. Of course, I do not think that it would be wise, from an overall viewpoint, to open internal memoranda and reports to public inspection.<sup>3</sup>

The CHAIRMAN. Would you agree that the public, which supports a foundation's tax subsidy, should have ready access to the foundation?

<sup>2</sup> Secretary Dillon agreed that the names and addresses of donors to a foundation should be open to public inspection. However, at a later date when the secretary reviewed the transcript, he qualified his earlier answer by stating "I think it quite proper that the names and addresses of the original creators of a foundation should be made public at the time the foundation receives its tax exemption."

<sup>3</sup> Secretary Dillon agreed that all matters relating to the granting or denial of tax exemption as well as revocations and penalties should be made public. However, at a later date when the Secretary reviewed the transcript, he qualified his earlier answer by stating "I would not object to public disclosure with respect to a foundation's application for exempt status or the statutory grounds upon which a foundation's exemption was revoked. Of course, I do not think that it would be wise, from an overall viewpoint, to open internal memoranda and reports to public inspection."

Secretary DILLON. I don't quite understand. You say to the foundations themselves? I don't quite understand what that means.

The CHAIRMAN. Well, information pertaining to the activities of the foundation.

Secretary DILLON. Through the Form 990-A, yes.

The CHAIRMAN. Well, what about the domicile of the foundation? Should information be available to the public as to where it is located and how it can be reached?

Secretary DILLON. You mean the names of them and all that?

The CHAIRMAN. Names and address, street address and post office box and everything else that would enable a person to contact the foundation.

Secretary DILLON. I see no reason why not.

The CHAIRMAN. In your view should a foundation's office be something more than just a post office box?

Secretary DILLON. That depends on the size of the foundation, because, as you know, the great bulk of foundations are of course not very large, and they are operated on a part-time basis and with no full time staff at all. So those obviously could not have an office. That is one of the problems in this number of foundations, because these large numbers that we are aware of are many of them very, very small, and they don't amount to much money overall. Assets of foundations are concentrated in a much smaller number of foundations than the total amount.

The CHAIRMAN. Would you agree that they should certainly have a telephone number?

Secretary DILLON. Not necessarily, if they are a very small one.

The CHAIRMAN. I mean a listed telephone number.

Secretary DILLON. A telephone number would presumably be the number of the trustee or the president or the officer, whatever it is. Personally he should have one. I assume he does.

The CHAIRMAN. We have found that some of the foundations are allergic to listed telephone numbers. For example, a small sampling shows that none of the following foundations in New York City have listed telephone numbers: Flagg Foundation, Inc. (assets \$140,000 December 31, 1962); Henry Luce Foundation, Inc. (assets \$2.3 million December 31, 1962); Vivian B. Allen Foundation (assets \$4 million December 31, 1960); Owen Cheatham Foundation (assets \$529,000 December 31, 1960).

In your view is the present law, as it applies to foundations, too permissive?

Secretary DILLON. I think in certain respects it is. I have said before that I think there should be a direct prohibition on self-dealing rather than a permissive situation such as the present law has. That is one area. I also think this may apply in other areas. We need more specificity in the area of accumulations.

The CHAIRMAN. How many applications for tax exemption did the IRS approve in 1963? Do you know?

Secretary DILLON. No, I don't. I think there are several thousand, but they will be able to give that to you tomorrow.

The CHAIRMAN. Are the antitrust laws and the regulations of the SEC fully applicable to foundations?

Secretary DILLON. I would assume so, generally.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether they are being used as a device for engaging in various trade practices which might be in violation of certain statutes administered by the Federal Trade Commission or the Antitrust Division?

Secretary DILLON. I don't think so. I don't think that is the Treasury's business. The Treasury is in business to see that tax exempt foundations follow the laws which grant them, and I think these other areas would come under the appropriate bodies, whether it be the Federal Trade Commission or the SEC. In the Treasury we clearly don't have the competence to administer all these other laws and don't really probably know on some of these complex things whether they are being avoided or not.

The CHAIRMAN. During your term of office, Mr. Secretary, has the Treasury, on its own initiative, ever forwarded to the FTC or the Antitrust Division information regarding the use of a foundation as a device for engaging in various trade practices which may be a violation of certain statutes administered by the Federal Trade Commission or the Antitrust Division?

Secretary DILLON. I understand that a procedure has been adopted under which the Internal Revenue Service advises the Department of Justice of information it possesses concerning violations of non-tax Federal laws. The Internal Revenue Service is in continuous close contact with the Department of Justice, and they would probably be able to give you a better answer on that. They are furnishing them information all the time. Whether they did in this field, I just don't know.

The CHAIRMAN. In the course of the administration of its various regulations concerning foundations, does the Treasury examine the foundations to determine whether contributions are being made to the foundations by persons or organizations that supply goods or services to companies interlocked with the foundations?

Secretary DILLON. I don't think we do that because, as I understand it, there is no prohibition against that at all under present law. That is one of the things that might be prohibited under a strict no self-dealing law which I think should be passed.

The CHAIRMAN. During your term of office has the Treasury, on its own initiative, ever forwarded to Congressional committees, the White House, or other government departments information regarding contributions to foundations by persons or organizations that supply goods or services to companies interlocked with the foundations?

Secretary DILLON. I don't think so. You would have to ask the Internal Revenue. I wouldn't know personally. As a matter of personal practice, I do not associate myself, and have disassociated myself ever since I was in the Treasury, with individual tax cases and tax questions, so that to the extent it is an individual case dealing with an individual taxpayer or an individual foundation which is not a taxpayer, but has to file information returns, I would not have any action. That has been left entirely to the Internal Revenue Service.

The CHAIRMAN. In your view should foundations be permitted to accept contributions from (1) persons or organizations that supply



goods or services to companies interlocked with the foundations, or (2) from persons or organizations that buy goods or services from companies interlocked with the foundation?

Secretary DILLON. I don't know quite what that means, when you refer to companies interlocked with the foundation. But, as I say, I think there should not be self-dealing. I don't know that there is anything necessarily wrong in accepting a cash contribution.

Mr. ROOSEVELT. Would the Chairman yield? The point of that question, I think, is that if the company that is interlocked with a foundation is doing business and by a contribution to the parent foundation they get the business because of that interlock, they are obviously getting an advantage.

Secretary DILLON. Yes. Well, that obviously should be one of these things which should be considered in drafting a broad self-dealing law.

The CHAIRMAN. During your term of office has the Treasury, on its own initiative, found any cases where a contribution has been made to a foundation for a business purpose rather than an eleemosynary purpose? For example, under the Robinson-Patman Act, business concerns are prohibited from making disproportionate discriminatory discounts to particular buyers if the effect might be to substantially lessen competition or tend to create a monopoly.

Do you know of any cases where contributions to a foundation may have been a method of getting around this provision of law?

Secretary DILLON. I don't, but, Mr. Chairman, I would like to repeat, again, you are addressing these questions to the wrong person. Internal Revenue Service has the full authority, and the Treasury does not set itself up as a court of appeals above the Internal Revenue Service in individual tax matters.

I know that there have been many hundreds of revocations by the Internal Revenue Service of exempt organizations exemptions, and I am sure there have been some in the field of foundations, quite a few. I don't know what the basis of those various ones have been, because none of the individual things have been referred to me. I am sure that the Internal Revenue Service will be able to supply that sort of information. I can't. I don't know it.

The CHAIRMAN. Are you familiar with the business practice known as reciprocity? It involves tacit or actual agreement to do business with a firm if it reciprocates and gives business in return. You are familiar with that, I assume, Mr. Secretary.

Secretary DILLON. I have read about it.

The CHAIRMAN. During your term of office has the Treasury, on its own initiative, ever forwarded to the FTC or the Antitrust Division information regarding foundations that may be parties to reciprocity arrangements? For example, where a business affiliated with a foundation says to one of its suppliers, "I will buy from you if you will contribute to such and such a foundation" or, "if you buy from me, such and such foundation will make you a business loan at favorable terms"?

Do you know of any situations like that?

Secretary DILLON. I don't know of them personally. The same thing applies.

The CHAIRMAN. Do you consider such arrangements to be legitimate practices for a foundation to be a party to?

Secretary DILLON. I think that certainly anything that is self-dealing and anything where a foundation is used in a way that will bring a benefit to the donor of the foundation, a personal benefit, is not proper.

That is a broad characterization, but that will be a complex area to draw legislation to cover all these things, but it all comes under the same general tent.

The CHAIRMAN. Are you aware of the fact that reciprocity practices may violate the antitrust laws?

Secretary DILLON. I would assume they may.

The CHAIRMAN. Our study indicates that many business suppliers and buyers have made sizable contributions to foundations controlled by customers. For example, we know that a number of suppliers of the Hilton Hotel chain are contributors to the Hilton Foundation. Mr. C. N. Hilton, Jr., Secretary of the Conrad N. Hilton Foundation of Los Angeles, has acknowledged that, during the fiscal years ending February 28, 1952 through February 28, 1963, 29 donors—who were suppliers of goods or services to Hilton Hotels Corporations or its subsidiaries—made contributions to the Conrad N. Hilton Foundation in the amount of \$61,695.18.

Does not this kind of situation appear to raise the specter of business reciprocity—We will buy from you if you contribute to our foundation?

If so, does it not raise a number of serious antitrust problems? Specifically, may it not involve a possible violation of the Robinson-Patman Act because it involves the inducement of discriminatory prices?

Or may it not involve a violation of Section 5 of the FTC Act as have other instances of business reciprocity because they involve “unfair methods of competition”?

Would you like to comment on those, Mr. Secretary?

Secretary DILLON. Well, all I can say is that speaking to the author of the Robinson-Patman Act, I don't feel that I am in a position to comment because I am not fully aware of the details of that Act, and if you feel that this might be a violation of it, I would accept your judgment as the author of the Act, and I would think that would be a matter for the organization which polices that Act to look into it.

The CHAIRMAN. Thank you, sir. I will ask Mr. Olsher to continue.

Mr. OLSHER. Here is another case I am wondering about. The Rogosin Foundation, of New York City, is controlled by the Rogosin family. The Rogosin family has also dominated Beaunit Corporation (formerly Beaunit Mills, Inc.), Rogosin Industries, Limited, and Skenandoa Rayon Corporation.

At December 31, 1952, the Foundation held 33⅓ percent of the non-voting preferred stock of Beaunit Mills, Inc. (carrying value \$2.7 million) as well as 5 percent of the common voting stock of the same corporation (carrying value \$1.9 million).

Beaunit Mills, Inc., manufactures synthetic yarn, knits and weaves fabrics, and manufactures intimate apparel. The Goodyear Tire and Rubber Company of Akron, Ohio, has been a buyer of tire-cord yarn from Beaunit Corporation.

In March 1952, Goodyear made a cash donation of \$150,000 to the Rogosin Foundation. Additionally, on March 10, 1952, Goodyear loaned \$2.5 million to the Rogosin Foundation at 4 percent interest. The loan was to be paid off in installments due January 3-August 15, 1953, January 3-August 15, 1954, and January 3-August 15, 1955. According to the Foundation, payments on the loan were made on August 15, 1953, August 15, 1954, and August 15, 1955.

The Foundation states that it used the \$2.5 million loan to purchase from Beaunit Mills, Inc., 30,000 shares of the latter's preferred stock. An identical number of shares of Beaunit Mills, Inc., preferred stock was pledged by the Foundation as collateral for the loan.

Has the Treasury examined this to determine whether this arrangement involves a price discount from Rogosin to Goodyear, for which Goodyear, the buyer, compensated Rogosin by making a contribution to the Rogosin Foundation?

Secretary DILLON. I would have to ask the Internal Revenue Service.

The CHAIRMAN. The same answer you gave before?

Secretary DILLON. Yes.

Mr. OLSHER. If this were the case, would it not seem to raise both tax and antitrust problems?

Secretary DILLON. If it was a discount that was an unfair discount under the antitrust laws, if they apply to a situation like that, I would think it probably would raise a problem. I don't quite see offhand without studying the matter and getting better legal advice, where it would raise tax problems.

Mr. OLSHER. First, is it an method whereby the buyer compensates the seller by making a tax deductible contribution to the Rogosin Foundation?

Secretary DILLON. That is not the seller.

Mr. OLSHER. I beg your pardon?

Secretary DILLON. I say the Rogosin Foundation is not the seller. It is the foundation owned—

Mr. OLSHER. The buyer compensates the seller.

Secretary DILLON. The Beaunit Mills is the seller.

Mr. OLSHER. The buyer compensates the seller via the means of making a tax deductible contribution to the foundation.

Second, would not this practice, at best, be a distortion of the pricing and exchange process in a free enterprise economy?

Secretary DILLON. I am in no position to answer that. I don't know whether it would or not.

Mr. OLSHER. Third, might not this practice actually involve (1) a violation of the Robinson-Patman Act because it involved discriminatory pricing or, (2) a violation of Section 3 of the Federal Trade Commission Act because it is an unfair method of competition?

Secretary DILLON. I would suggest asking the Federal Trade Commission.

Mr. OLSHER. Additionally, of course, Goodyear was acting as a source of unregulated credit.

The CHAIRMAN. Off the record.

(Discussion off the record.)

(Whereupon, at 11:50 a.m., the subcommittee recessed, to reconvene at 4:15 p.m., the same day.)

AFTERNOON SESSION

The CHAIRMAN. The Committee will please come to order. Two members have been here and have just left temporarily. They will be right back.

Mr. Dillon, we appreciate your coming back, sir.

Would the persons in the IRS who examine foundation tax returns be sufficiently familiar with the antitrust laws to know whether the practices I have cited may violate Section 5 of the FTC Act or the Sherman Act? If they found such practices, to whom would they report them?

TESTIMONY OF THE HONORABLE C. DOUGLAS DILLON, SECRETARY  
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Secretary DILLON. I think my answer is the same. You would have to get the information from the IRS.

The CHAIRMAN. Are you familiar with any instances where individuals who are board members of foundations also sit on the boards of competing companies?

Secretary DILLON. Competing with the foundation? I don't quite understand the question, because I don't understand how a company competes with the foundation.

The CHAIRMAN. Companies that compete with each other or one another.

Secretary DILLON. Oh, competing companies that compete with each other. I wouldn't know of any, any more than other individuals not on foundations.

The CHAIRMAN. If this practice does exist, do you feel that it may create antitrust problems?

Secretary DILLON. Well, I think that is not good practice generally whether the people are on foundations or not, to be on the board of competing companies.

The CHAIRMAN. During your term of office has the Treasury ever sought any instances of this to the antitrust agencies?

Secretary DILLON. I wouldn't know.

The CHAIRMAN. As you know, Section 8 of the Clayton Act provides that no person shall be a director of two or more competing corporations. Now, that Act does not apply to indirect interlocks, such as when a foundation has two board members, one of whom is also a board member of corporation A and the other member is on the board of corporation B (a competitor of A). While there is nothing illegal about such an arrangement under Section 8, do you see any special public interest problem when a foundation established for eleemosynary purposes becomes a vehicle for such indirect interlocks which might affect competition?

Secretary DILLON. Well, I don't think there is anything wrong if a foundation tends strictly to charitable business and does not get into business relationships.

I could see that a foundation such as the Rockefeller Foundation, the Carnegie Corporation, might have people who are interested in charity on their boards who happen to be in the same general line of

business, and they would not have anything to do with doing business with each other. They would just be talking about charitable things. But if they are doing business with each other, then I think that is bad.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether there are any actual or potential conflicts of interest situations?

Secretary DILLON. I would rather the Internal Revenue answer that. I think we just stick to the tax consequences and the tax law.

The CHAIRMAN. During your term of office has the Treasury, on their own initiative, ever forwarded to the FTC or Justice information regarding actual or potential conflicts of interest situations in any foundations?

Secretary DILLON. That is the same situation.

The CHAIRMAN. The same answer?

Secretary DILLON. Yes.

The CHAIRMAN. Will you agree, Mr. Secretary, that there is no special legal treatment of foundations in the statutes administered by the SEC?

Secretary DILLON. As far as I know there is none.

The CHAIRMAN. Will you agree that there is ample evidence that many foundations are actively trading in the stock market with substantial portions of their funds?

Secretary DILLON. Well, you provided some evidence about a number of foundations in one of your reports. I don't know how many there are, but there are certainly some.

The CHAIRMAN. That is the only information you have of it?

Secretary DILLON. I think that is the only good information we have, yes.

The CHAIRMAN. Would you agree that, judging from the content of their portfolios and the frequency of turnover, many foundations are concerned less with equity yields and inflationary trends than they are with the lure of capital gains to swell their principal funds?

Secretary DILLON. I would think that certainly the mass of the capital that is owned in foundations which is largely in the larger foundations, stays invested without any rapid turnover. There may well be some foundations that are in for trading, and to the extent there are, they are obviously trying to achieve capital gains rather than straight income.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether they are violating any Federal securities laws?

Secretary DILLON. I wouldn't think so.

The CHAIRMAN. Federal securities laws?

Secretary DILLON. I wouldn't think so. I think that is tax examination.

The CHAIRMAN. During your term of office has the Treasury, on its own initiative, ever forwarded to the SEC information regarding any foundation's violations of the federal securities laws?

Secretary DILLON. That again would be something for the IRS. They would forward direct if they did.

The CHAIRMAN. In your view are speculative gains for charity worth the risk of speculative losses?

Secretary DILLON. In my personal view the answer to that would be no.

The CHAIRMAN. Would you agree that speculative activity by foundations warrants surveillance?

Secretary DILLON. I think that a foundation that puts a great deal of effort into speculating is doing the same thing that I mentioned earlier this morning about the foundation that puts a great deal of its time into the running of business. It is not devoting that time to charitable pursuits, and I think it would be better if foundations devoted all their time to charitable pursuits, as I think the great majority of foundations, measured by their assets, do.

Of course, as I say, it is a different thing when you talk about these smaller foundations that don't have so many assets.

The CHAIRMAN. Do you know of any instances where directors or trustees of a foundation have reimbursed the foundation for losses incurred in speculation?

Secretary DILLON. I don't happen to know of any.

The CHAIRMAN. Do you consider any of the following to be proper practices for a foundation: involvement in corporate proxy fights for control of companies whose securities are listed on the Exchanges? Involvement in insider deals?

Secretary DILLON. I would think the first one, involvement in proxy contests, ordinarily is not proper. But there might be cases where a foundation had a substantial amount of stock in a company, and I think to the extent that they continued to have that, they would be interested in the management, and I could conceive of cases where it would be proper to be in a proxy contest over the management.

I don't know what insider deals means, but I certainly don't think that they should have anything of that connotation. I don't think anything of that connotation sounds proper for foundations.

The CHAIRMAN. Or involvement in stock price manipulations?

Secretary DILLON. Certainly not.

The CHAIRMAN. Involvement in short sales?

Secretary DILLON. I would think not. That is speculation and I would think that kind of speculation is not proper.

The CHAIRMAN. Involvement in margin trading?

Secretary DILLON. That is the same thing.

The CHAIRMAN. Speculation in commodity futures.

Secretary DILLON. I would think that is the same thing, the main reason being that while the proceeds all go to charity, it means that those who are running the foundation, if they are doing this thing, would spend too much of their time on things that are not charitable. I don't think they should be doing that. They are also risking their own capital rather than keeping it available for foundation purposes.

The CHAIRMAN. Acting as unregulated sources of stock market credit?

Secretary DILLON. No, I don't think that is proper.

The CHAIRMAN. Speculation in oil wells?

Secretary DILLON. That is another kind of speculation like running a business. That is a business that is very popular down in your part of the country, Mr. Chairman.

The CHAIRMAN. I know about some of them. In the course of your administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether they are involved in any of the following activities: Insider deals?

Secretary DILLON. I would think again that is a question for the IRS. I think that all we do is administer the present tax law, and I would be surprised if they go beyond that.

The CHAIRMAN. Stock price manipulations?

Secretary DILLON. The same answer.

The CHAIRMAN. Margin trading?

Secretary DILLON. The same answer generally.

The CHAIRMAN. Speculation in commodity futures.

Secretary DILLON. The same answer.

The CHAIRMAN. Short sales?

Secretary DILLON. The same answer.

The CHAIRMAN. Acting as unregulated sources of stock market credit?

Secretary DILLON. The same answer.

The CHAIRMAN. Speculation in oil wells?

Secretary DILLON. The same applies.

The CHAIRMAN. Involvement in corporate proxy fights for control of companies whose securities are listed on the Exchanges?

Secretary DILLON. The same answer.

The CHAIRMAN. During your term of office has the Treasury, on its own initiative, ever forwarded to the SEC information regarding foundations' activities in the following areas: Involvement of foundations in corporate proxy fights for control of companies whose securities are listed on the Exchanges?

Secretary DILLON. I would be very surprised if they have. I assume not. But the IRS would have to answer that question.

The CHAIRMAN. Involvement of foundations in insider deals?

Secretary DILLON. The same reply.

The CHAIRMAN. Involvement of foundations in stock price manipulations?

Secretary DILLON. The same answer.

The CHAIRMAN. Speculative activity and margin trading of foundations?

Secretary DILLON. Same reply.

The CHAIRMAN. Short sales by foundations?

Secretary DILLON. The same answer.

The CHAIRMAN. Foundations as unregulated sources of credit?

Secretary DILLON. Same reply.

The CHAIRMAN. Speculation in commodity futures?

Secretary DILLON. Same reply.

The CHAIRMAN. Do you consider short sales to be a proper practice for a tax-exempt foundation?

Secretary DILLON. I think you asked that question before, and I thought I said I did not think so.

The CHAIRMAN. Schedules submitted by the Lillia Babbitt Hyde Foundation, of New York City, show acquisition date of October 19, 1962 and sales date of March 5, 1962 on 2,000 shares of Pacific Gas & Electric common. The gross sales price for the 2,000 shares was \$70,750 with the foundation showing a gain of \$9,052.55.

Similarly, schedules submitted by the Clark Foundation, of New York City, show acquisition dates of July 27, 1962 to July 30, 1962 and sales date of February 28, 1962 on 700 shares of Westinghouse Air Brake common. The gross sales price for the 700 shares was \$20,387.50, showing a loss of \$4,410.49.

On the surface, would these two cases seem to indicate short sales on the part of the Hyde and Clark Foundations?

Secretary DILLON. As I gather, the sales were prior to the purchase. That is a question that I think that SEC could better answer than I can.

It is not necessarily short sales because they may have already had some of those securities in their portfolio, and simply sold some, and then decided they wanted to add to their investment 6 months later, and then bought some more. That is a possibility. I would have to know what the facts were to have a real opinion.

The CHAIRMAN. There is also indication that, during the period of December 1, 1961, through June 30, 1962, certain foundations sold stock which they repurchased not too long thereafter. For example, the Mary Reynolds Babcock Foundation, Winston-Salem, North Carolina, sold 30,000 shares R.J. Reynolds Tobacco Common on December 28, 1961 for a sales price of \$2,398,820.49, approximately \$80 per share, showing a gain of \$2,096,195.49. On March 29, 1962, the foundation repurchased 10,000 shares of the same stock at a cost of \$670,000 or \$67 per share.

In another case the Cummings Foundation, of Chicago, on April 9, 1963 sold 1100 shares of Metro-Goldwyn-Mayer Common for \$47,300 (roughly \$43 per share), showing a loss of \$19,505. Subsequently, on June 7, 1962 and June 18, 1962, the Foundation repurchased 1,000 shares of Metro-Goldwyn-Mayer Common at a cost of \$32,199 (roughly \$32 per share).

Mr. Nathan Cummings, Chairman, Consolidated Foods Corporation (listed on the big board), is formed and President of the Cummings Foundation and a director of Metro-Goldwyn-Mayer.

The David, Josephine and Winfield Baird Foundation, of New York City, is a similar case. During the period January 31, 1962 through March 6, 1962, the Foundation sold 4,900 shares of Metro-Goldwyn-Mayer Common for \$261,837 (roughly \$53 per share), showing a profit of \$2,985. Subsequently, during the period of March 22, 1962 through June 15, 1962, the Foundation repurchased 4,400 shares of the stock at a cost of \$185,240 (average cost roughly \$42 per share). The Baird Foundations have also been substantial purchasers of stocks of Consolidated Foods Corporation. In turn, Mr. Nathan Cummings and Consolidated Foods have been substantial contributors to the Baird Foundations.

In your view do these transactions of the Babcock, Cummings, and Baird Foundations represent any special problem areas?

Secretary DILLON. I don't think so. It seems to me in this case from the date you mention, Mr. Chairman, although on further study I reserve my right to change that view, but from first hearing those sales took place at a time when the stock market was close to or at an all time high level, which was in late 1961 and early 1962.

Thereafter the stock market, as you all recall, went much lower, and finally had what was called a crash in the end of May, and the prices



dropped very precipitously, and I can well understand any investor, whether it is a foundation or anyone else, when they saw the low prices of stocks which they knew of and understood, the price that they reached that June, they decided to step in and buy, and I think they would be more likely to buy stocks they knew about than ones they didn't know about. For that reason offhand I wouldn't think that there is anything very surprising or anything bad about those particular transactions.

The CHAIRMAN. Has the Treasury collected and collated any information as to the extent that foundations are involved in speculation and trading on margin?

Secretary DILLON. No, we haven't any general information of that nature.

The CHAIRMAN. Has the Treasury collected and collated any data on the subject of foundation involvement in corporate proxy fights?

Secretary DILLON. I don't think we have any overall information on that either.

The CHAIRMAN. In your view should a foundation be permitted to enter into a proxy fight?

Secretary DILLON. As I said earlier, I think there would be situations where, in the protection of the investment they have, a foundation should have the right to vote its stock. I think a prohibition of that, a complete prohibition, would be unwise as long as foundations are allowed to own substantial amounts of any one company.

If you had diversification rules, a situation where a foundation only had small holdings in each company then maybe it would be one could say that they shouldn't get into proxy fights. They would have the alternative of selling their securities if they didn't like the new management. But where a foundation is heavily involved in a particular security, and there is a contest between two managements, and they feel one of them is good and the other is bad, I think they not only have the right but the duty to vote for the one they think is the best management.

The CHAIRMAN. I shall ask Mr. Olsher to continue.

Mr. OLSHER. Would you agree that—to the extent that foundations may become involved in proxy fights for control of companies whose voting stocks are listed on Exchanges—they are subject to the same filing and disclosure requirements as any other participant?

Secretary DILLON. I would think so.

Mr. OLSHER. There is every indication that foundations have entered into proxy fights. According to press reports, there have been a number of such cases. In 1960, during the battle for control of the Endicott-Johnson Corporation, the Albert A. List Foundation, of Byram, Conn., received 54,000 shares of Endicott-Johnson from the J. M. Kaplan Fund of New York City. These shares were used by Mr. Albert A. List in his unsuccessful attempt to acquire control of the Corporation.

Our records indicate that, on February 20, 1959, a security analyst employed by Jemkap, Inc., submitted a memorandum to the J. M. Kaplan Fund, which is connected with Jemkap, stating as follows:

Endicott-Johnson Corporation may be a likely target for a "take-over" situation, in view of its rich net worth capital position to be "sweetened" by a rebound profit-wise. The common stock of Endicott-Johnson Corp. is un-

usually cheap on the basis of both its rich balance sheet and prospect earning power about to materialize. As against a seemingly limited risk on the downside, there is apparently a capital appreciation potential of some 50 per cent on the upside. An even greater gain could result market-wise if control of this company were in the hands of interests aimed at acquisition or merger. Endicott-Johnson should prove to be a well-heeled investment.

Also, according to press reports, during the struggle over the Alleghany Corporation between Allan P. Kirby and the Murchison Brothers, the Fred M. Kirby Foundation purchased Alleghany shares despite the fact that the shares had not previously paid a dividend.

Secretary DILLON. I would like to say in connection with proxy fights that where the capital of a foundation is used alongside of other capital of an individual to try to gain control of the company, that would probably be in the area which I would call self-dealing, and that is something which I would not favor and would not think is proper. The kind of proxy situation where I think it is proper for a foundation to vote its stock in a proxy fight is quite different from apparently the two kinds you have mentioned.

The CHAIRMAN. Would you agree, Mr. Secretary, that the SEC should be alerted to the possibility of a foundation's involvement in insider deals and stock price manipulations?

Secretary DILLON. I think the SEC has full responsibility in all those areas, and certainly if there is any problem there, it would be helpful if they know about it, because that is what they have offices for in New York, and they have rules, reports, and they should know about it.

The CHAIRMAN. For some time, we have been looking into the stock market activities of the 546 foundations under study by this Subcommittee. Although the study is not complete as yet, preliminary figures indicate that, during the period 1951 through 1961, the 546 foundations sold over \$8.6 billion of securities, showing a capital gain of over \$1.8 billion. These figures include \$3.7 billion of stock sales showing a gain of \$1.8 billion.

Preliminary figures also indicate that, during the period of December 1, 1961 through June 30, 1962 (the period of the big plunge of 1962), the 546 foundations sold 8.4 million shares of traded stocks for a sales price of \$565 million showing a gain of over \$421 million. During the same period, the 546 foundations purchased 4.4 million shares of traded stock at a cost of \$201 million.

In your view do these figures indicate a sizable amount of market activity by foundations?

Secretary DILLON. Well, I would have to know a little more about the breakdown. It sounds like it is fairly sizable, but I do know that during that period the Ford Foundation was placing large blocks of Ford stock on the market for the purpose of diversification, and I don't know whether that is included or how important it is in there, and I do know that there have been similar situations where foundations have found themselves with one company where they had a very large investment, and they felt they should diversify.

Now I think that sort of ceiling is normal and good. Selling for the purpose of making gifts, if that is done, is perfectly good. As I said, I don't believe that there should be any great deal of speculation by foundations.

To the extent this indicates that, I wouldn't think it was good, but I would have to go into the details far more than I have to have a worthwhile opinion.

The CHAIRMAN. Would you agree that there is ample evidence that foundations' speculation is not limited to stock transactions?

Secretary DILLON. I don't have the evidence to answer that as of now.

The CHAIRMAN. Would you agree that there is ample evidence that foundations have risked their assets in oil ventures, commodity futures, and even third mortgages on Miami Beach hotels?

Secretary DILLON. I imagine from the question that your studies have shown that to be the case. I am not aware of specific examples of that, but if you say so, I imagine they exist.

The CHAIRMAN. Would you agree that a foundation can be a source of unfair competition arising from active use of foundation assets by donors or trustees for private business ends?

Secretary DILLON. They can be. They shouldn't be.

The CHAIRMAN. Would you agree that there are an infinite number of ways in which foundation assets or income can be used for the preferment of one set of private persons over another?

Secretary DILLON. I assume there are all sorts of ways that foundation assets could be used or abused. The point of our study is to try to come up with recommendations that will stop any abuses there may be so that actions of all foundations would be the same as the actions of the great majority of foundations in terms of assets—again I say in assets—which I am sure have been perfectly proper.

The CHAIRMAN. Would you agree that foundations' moneylending activities put them into unfair competition with private lenders and also give the foundations an element of influence over a wide range of business ventures?

Secretary DILLON. It could be, if they are too active in that area. That could happen. Some of the things that your Committee has reported are of that type.

The CHAIRMAN. Would you agree, Mr. Secretary, that foundations' moneylending activities may present problems, such as preferential rates of interest?

Secretary DILLON. It is possible.

The CHAIRMAN. Would you agree that, at present, the only restraint on a foundation's moneylending appears to be that loans must carry a "reasonable" rate of interest and adequate security, and that nothing prevents the foundation from making loans to its founder or his family, the businesses under his control, or a donor?

Secretary DILLON. Generally, you are absolutely correct. That is what the law provides, and that is one of the things that we think should be changed.

The CHAIRMAN. Would you agree that foundation tax returns should require schedules of loans receivable, showing the name and address of the debtor, purpose for which each loan was used by the debtor, information as to whether the loan is secured by note, date made, face amount, interest rate, due date, date paid, and collateral pledged for each loan?

Secretary DILLON. I think that may well be advisable, to have full reports of the assets of foundations and that will include loans as well as holdings of real estate, common stock or anything like that. If you had a full report, you would have most of the information that you read out there. However, the Internal Revenue Service has been giving considerable study to the form required, and one of the problems you have is that you can ask for all sorts of information which might be useful in a particular case, but you have to take into account the broad band of the cases and not ask for everything from everybody.

The same would apply to an individual income tax return. We could think of all sorts of questions that would be nice to know, but we get a tax return instead of being four pages long would be twenty or thirty pages long.

The CHAIRMAN. Would you agree that foundation tax returns should require schedules of loans payable, showing name and address of the creditor, purpose for which each loan was used by the foundation, information as to whether the loan was secured by note, date made, face amount, interest rate, due date, date paid, and collateral pledged for each loan?

Secretary DILLON. Again, that might be useful, but it is a difficult question as to whether there is enough information that would be worth extending the return that long without getting it too complex. I just don't know what the answer to that would be, because it would complicate the return.

If this was being done in enough volume so it was worth while, then I think it would be a good thing to do, but I would like to know more about what the problem is before saying yes or no to whether the return should be that complex.

The CHAIRMAN. Would you agree that the repeated misuse of a foundation's funds could conceivably be prevented if detailed schedules of loans receivable and payable were required on foundation tax returns?

Secretary DILLON. Well, to the extent foundations' funds are misused—they shouldn't be misused at all—to the extent they are misused through either making loans or receiving loans, it would help by asking for reporting.

But I am not certain that that is the proper answer. The proper answer may well be to enact legislation which prevents loans or transactions of any sort with donors or donor controlled individuals or sister relations of that type, and that might answer the problem much more clear-cut than having to complicate the returns of all foundations in order to capture a few of them that are doing something they shouldn't be doing.

The CHAIRMAN. In your view should a foundation be permitted to borrow funds for purposes of speculation?

Secretary DILLON. No, as a general rule I would not think that is proper.

The CHAIRMAN. In your view should a foundation be obliged to have an independent audit annually by a certified public accountant?

Secretary DILLON. Again that is a question of the size of the foundation. Certainly I think any large foundation should. But when you have a smaller foundation, I am not certain that that requirement of an every-year audit is necessary or even feasible. But certainly to the extent of any size, I think that that is a proper thing.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury investigate loans to determine whether statutory standards are being met?

Secretary DILLON. You would have to ask the IRS that. I wouldn't know.

The CHAIRMAN. Would you agree that it is a considerable competitive advantage to a borrower to have a ready source of cash, even if it is fettered with the statutory standards of a reasonable rate of interest and adequate security—in other words, to have a ready source of cash without having to assume a responsibility to banks or stockholders?

Secretary DILLON. I think that might well be. Again I think that the problem there would be taken care of with a provision against self dealing.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether donations of notes receivable by the foundations may be attempts to conceal bad business loans?

Secretary DILLON. Yes. You see at least since 1962 when the form 990-A was changed, foundations are required to specify what their receipts are, and naturally that enables us to take a look at anything in the nature of contributions of receivables or contributions of property that is indeterminate in value and requires a much closer look to be sure it has been valued properly.

I am sure the Internal Revenue Service is able to do that, and does do that much better now than it did in the past. In the past they didn't do it because, as I have pointed out before, the 990-A until 1962 merely called for the amount of a contribution; it didn't require a description of the contribution.

The CHAIRMAN. I shall ask Mr. Olsher to continue.

Mr. OLSHER. During your term of office has the Treasury, on its own initiative, ever forwarded to any Congressional Committee information regarding donations by foundations which were made to conceal bad business loans?

Secretary DILLON. My guess is it has not, because I think anything that has been forwarded to Congressional Committees would presumably be forwarded by the Treasury, and I know of no such thing.

Mr. OLSHER. By way of illustration, here is a problem that can result sometimes from bad business loans. This is a letter from Dr. W. Randolph Lovelace, II of the Lovelace Foundation in Albuquerque, New Mexico. It is addressed to Mr. David G. Baird, Baird and Company, 65 Broadway, New York. It deals with a donation that was given to the Lovelace Foundation by one of the Baird Foundations. Dr. Lovelace states as follows:

It was very distressing to us to hear that the Western Television Company was not planning to pay the notes as they became due starting July 1. As you know, we have been steadily expanding our program and we had budgeted these funds for use this year. Failure to receive these funds as expected will force us to curtail part of our program unless we are able to raise the money in some other way. Do you think it would be possible to discount these notes, or is there any possibility that Western Television might be able to pay them after all?

The Internal Revenue Service is on record as having advised certain foundations as follows—

Mr. ROOSEVELT. Could I interrupt there a minute? I think it ought to be clear on the record that there ought to be some supporting evidence that that is an attempt to conceal a bad debt. I mean simply reading a letter doesn't make it a bad debt per se. Would that be a fair statement, Mr. Secretary?

Secretary DILLON. I would think it would. I am not aware of the details of the transaction at all.

Mr. ROOSEVELT. I am not either. I do not know anything about it. Referring to the donation, in other words, it is perfectly conceivable that a donor might make a donation at that time without having any knowledge or any willful part in making a donation which turned out not to be a good solid contribution.

Secretary DILLON. It is perfectly possible, yes.

Mr. ROOSEVELT. I would not like the intimation to just rest on that.

Secretary DILLON. That is right.

Mr. ROOSEVELT. That it was necessarily so. If the committee has evidence that should be put in. It still does not mean that the contributor knew that at the time he made the donation. That is what I am trying to get at.

Secretary DILLON. Yes.

The CHAIRMAN. There will be additional testimony.

Mr. OLSHER. The IRS is on record as having advised certain foundations as follows:

Any further use of your funds to acquire mortgages or mortgage loans may jeopardize your tax-exempt status. Further, the use of borrowed funds to acquire income-producing property may also jeopardize the status of an otherwise tax-exempt organization.

One part of our study relates to the moneylending and borrowing activities of 546 foundations. To this end, we required the foundations to submit schedules of all loans receivable and loans payable during the period of 1951 through 1962. There is indication that funds loaned out by those foundations during the period 1951 through 1962 is about \$841 million. Their borrowings total \$251 million.

Our study is far from complete, but a preliminary examination of some of the loans receivable indicates that 22 foundations made loans of \$19 million to assist borrowers in purchasing securities.

A similar preliminary examination of some of the loans payable indicates that 23 foundations borrowed \$17 million for the purpose of purchasing securities.

We will need additional information from many of the foundations in order to determine the exact purpose of funds loaned out or borrowed. For example, some of the foundations state that certain loans were made for "general corporate purposes." There is no indication whether "general corporate purposes" include the purchase of securities or other assets.

Mr. McCULLOCH. Might I ask a question there?

The CHAIRMAN. Certainly, sir.

Mr. McCULLOCH. Is that the end of that communication?

Mr. OLSHER. Yes.

Mr. McCULLOCH. And there is no description as to the meaning of the phrase "general corporate purposes"?

Mr. OLSHER. No, not in the schedules they submitted to us. We will have to request additional information on those. These figures that

I cited include only those schedules that showed the purposes which were specific and which could be understood, such as purchase of securities.

Mr. McCULLOCH. And you do not have the articles of incorporation of the corporation in question or the foundation in question which would describe the ordinary corporate purposes?

Mr. OLSHER. Yes, sir, we have their charters and their corporate purposes.

Mr. McCULLOCH. And are they authorized to engage in such activities?

Mr. OLSHER. We would have to check each and every one.

Mr. ROOSEVELT. Mr. Chairman, may I ask a question? Do not most charitable foundations, in their articles of incorporation, as you may know from your general knowledge, specifically include that power?

Secretary DILLON. I think usually the charters as written by lawyers are written very broadly and include all sorts of powers whether or not they are expected to be used, so I think the answer to your question is probably yes.

Mr. ROOSEVELT. So again a question here, Mr. McCulloch, and not being a lawyer I may be out of my depth, but as I understand it, it is really not a question as to whether what may have been done was legal. It may have been the power of the foundation from a legal point of view but whether or not perhaps it is good public policy for which there should be some future course taken.

Mr. McCULLOCH. Yes. I understand that. I was asking the question so that the Internal Revenue Service could be completely informed on whether or not the activity in question is one that would continue to entitle them to the tax exemption.

Mr. ROOSEVELT. That would, of course, require a definite finding as to whether or not certain actions were to be prohibited by Federal law, because otherwise the Internal Revenue Service would have no basis to go on for declaring them not eligible for tax exemption purposes unless they had violated some Federal law, so long as what they did was within the power, the corporate power, under the charter granted to them by a certain state.

Mr. McCULLOCH. Well, it may not be that which is prohibited by Federal law. It might on the other hand be that which is authorized and would still result in a tax exemption.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether they are violating any Civil Aeronautics Board regulations?

Secretary DILLON. You will have to ask the IRS. I don't think so.

The CHAIRMAN. During the term of your office has the Treasury, on its own initiative, ever forwarded to the CAB information regarding any foundation's violation of CAB's regulations.

Secretary DILLON. You will have to ask the IRS.

The CHAIRMAN. The Bureau of Enforcement of the Civil Aeronautics Board contends that financial institutions lending money to airlines may come under CAB jurisdiction through terms of the loan agreements.

This was the Bureau's contention in the complaint of Hughes Tool Company v. Metropolitan Insurance Company, the Equitable Life Assurance Society of the United States, Irving Trust Company, Dillon Read & Company, Inc., Ernest R. Breech, Ben-Fleming Sessel, James F. Oates, Jr., Harry C. Hagerty, Charles C. Tillinghast, Jr., Pan American World Airways, Inc., and Juan T. Tripp.

Hughes Tool Company alleged that Equitable Life Assurance Society of the U.S., Metropolitan Life Insurance Company, and Irving Trust Company acquired control of the Trans World Air Lines without prior CAB approval in violation of section 408 of the Act. This allegation turns principally on whether the lending institutions may be held to be "persons engaged in a phase of aeronautics" and thus come under the provisions of the 1958 Federal Aviation Act, which require CAB approval of the various corporate relationships in the aviation industry.

According to the Bureau of Enforcement, "the issue here is not the fact of borrowing money or establishing a normal debtor-creditor relationship. The issue is whether the terms of the loan agreements inject the lending institutions into managerial functions."

Would you say that a foundation that lends millions of dollars to businesses year after year can be classed as a "financial institution," Mr. Secretary?

Secretary DILLON. I think it would depend on the circumstances. Certainly I can see some foundations who would lend money to businesses that would not be financial institutions. I don't know whether the Ford Foundation lends money or not, but it wouldn't be a financial institution as I would define them.

The CHAIRMAN. From September 28, 1960 through July 20, 1962, the Ford Foundation loaned \$3 million to Continental Airlines, Inc. at 6¼ percent-6½ percent interest, due December 31, 1972. According to the Foundation, Continental Airlines used the loans to purchase new equipment.

In your view should the Ford Foundation be classed as a financial institution lending money to an airline?

Secretary DILLON. I wouldn't think so.

(Discussion off the record.)

Mr. OLSHER. This deals with moneylending activities of foundations which we discussed earlier. Our records indicate that, during the period of 1951 through 1962, the Ford Foundation made loans to commercial organizations of at least \$300 million. This excludes the following types of loans receivable: U.S. government obligations; participations in loans made by the International Bank for Reconstruction and Development; short-term certificates of deposit of banks; short-term commercial paper; short-term fixed and time deposits with commercial banks; deposits with U.S. savings banks; and corporate bonds purchased through regular bond market channels.

In at least one instance, a loan was made to assist a borrower in purchasing securities. This was a loan of \$5 million to Rapid-American Corporation for the purpose of acquiring McCrory Corporation Common Stock. The loans in the amounts of \$3.5 million and \$1.5 million were made on May 18, 1962 and on June 14, 1962 respectively. Interest was 5¾ percent; due date is June 1, 1976; and collateral pledged is common stock of McCrory Corporation.



Mr. ROOSEVELT. Is this a question to the Secretary? A proper financial transaction for a foundation?

Mr. OLSHER. This is a continuation of an earlier statement on moneylending.

Secretary DILLON. I didn't understand that was a question.

The CHAIRMAN. Are there any special problems relating to foundations that make gifts abroad, Mr. Secretary?

Secretary DILLON. That make gifts abroad?

The CHAIRMAN. Yes.

Secretary DILLON. Under our law, a foundation that is domiciled in the United States can have activities abroad. The Rockefeller Foundation, for instance, has done a lot of medical research and medical work abroad. The Ford Foundation is doing a lot of work in underdeveloped countries, and I don't think there is anything wrong with that.

Mr. ROOSEVELT. Mr. Chairman, may I just ask this.

Mr. Secretary, there is some kind of regulation, however, I believe, which says if a domestic foundation puts more than a reasonable amount of its money abroad, I believe it may stand to lose its tax-exempt status. I know that in the Eleanor Roosevelt Cancer Foundation, when we were considering a fellowship program which largely would go to international research students, that the Treasury—this was submitted to the Treasury and the Treasury made some comment that in this particular case, as long as it was in proportion to the total that was being used, it didn't involve any problem, but warned us that it might if—

Secretary DILLON. There is no restriction on the amount of money which a bona fide domestic charity may spend abroad. What you may be referring to is a limitation which disallows deductions for contributions made to a domestic organization which is organized solely to solicit contributions in the United States for a foreign charity, and the domestic organization exercises no control over the use to which the foreign charity puts the funds. However, that limitation does not apply to bona fide domestic charities merely because they conduct their charitable activities abroad.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether their foreign operations may be in conflict with government policies?

Secretary DILLON. I would think you would have to ask the IRS that. I don't know what they do.

The CHAIRMAN. During your term of office has the Treasury, on its own initiative, ever forwarded to Congressional committees, the State Department, or the White House information concerning any foundation's activities abroad which may be in conflict with our government's policies?

Secretary DILLON. Not to my knowledge.

The CHAIRMAN. How much did all United States foundations spend on overseas donations in 1963?

Do you have the information?

Secretary DILLON. I don't have that. I think we might be able to get it. I don't know.

The CHAIRMAN. Will you furnish it?

Secretary DILLON. If we can get it I will be glad to.

(The information submitted by the Treasury follows:)

The Internal Revenue Service's records do not indicate the amount spent by all U.S. foundations for international projects. However, according to information contained in the Foundation Library Center's Directors, the larger foundations made grants of approximately \$52 million in 1962 for international type projects. However, not all of these funds go abroad. Approximately 40 percent (\$20 million) of these grants fall within the category of International Studies, most of which went to American universities for projects such as area studies.

The CHAIRMAN. Our study has stirred up considerable Congressional interest in the ever-increasing outpour of foundation funds to foreign countries. In the minds of many Congressmen, there is a big question as to whether Congress intended that foundations should be permitted to spend their funds abroad. These Members believe that the original intent of Congress was to grant tax exemption to foundations for the purpose of aiding charity, education, etc. in the United States. Hence they are disturbed over the mounting flood of foundation funds into foreign activities.

Here are a few illustrations of foreign expenditures:

- During fiscal year ending September 30, 1962, the Ford Foundation appropriated \$45,916,448 for foreign activities. During fiscal year ending September 30, 1956, the Ford Foundation's expenditures for foreign activities were in excess of \$16 million.

- In 1962, the Carnegie Corporation of New York paid out \$798,402 for programs in the British Commonwealth nations.

- The following describes a few expenditures from among the millions of dollars in oversea expenditures made by the Rockefeller Foundation during the year 1962:

<i>Donee</i>	<i>Amount approved or paid out</i>
Maintaining and operating the Villa Serbelloni in Italy-----	\$138, 213
Special program of fellowships, scholarships, and training awards in Asia, Latin America, the Middle East and Africa-----	231, 077
Special program of grants to aid to Asia, Latin America, the Middle East, and Africa-----	119, 532
University College, Ibadan, Nigeria-----	1, 500, 000
University of Levanium, Leopoldville, Republic of the Congo-----	175, 000
Ministry of Health, Nairobi, Kenya, East Africa-----	45, 430
Ministry of Health and Labour, Tanganyika, East Africa-----	152, 000
University of East Africa, Kempala, Uganda-----	164, 897
University of Khartoum, Republic of the Sudan-----	500, 000
Indian School of International Studies, New Delhi, India-----	150, 000
University of Lucknow, India-----	114, 700
Poona, India-----	107, 159
University of Ankara, Turkey-----	110, 000
Institute of Genetics, Misima, Japan-----	60, 000

Congress is on record as opposing aid to countries which "live on our aid while they channel their own resources into arms from Russia."

It is alleged that this is precisely what has been happening in this United Arab Republic. According to press reports, Colonel Nasser has been sending a large part of his exportable cotton to the Communist countries as payment for over \$100 million a year in arms and other assistance.

Yet the Ford Foundation has allocated \$135,000 to the University of Cairo and another \$210,000 to the University of Alexandria—all for technical assistance. Here is something I should like to ask you about, Mr. Secretary. A United States business corporation makes this—

Mr. ROOSEVELT. Mr. Chairman, are we going to leave this problem, because I want to say a word about that before we leave it.

The CHAIRMAN. Let me finish this.

Mr. ROOSEVELT. This deals with the same thing.

The CHAIRMAN. Here is something I would like to ask you about. A United States business corporation makes a gift to a United States charitable trust. The charitable trust in turn makes a gift of such funds to a United States charitable corporation. The charitable corporation spends the money for charitable purposes abroad.

Have these funds been used within the United States or its possessions when the charitable trust pays them over to the charitable corporation?

Secretary DILLON. I would think probably technically under the law they have. I am not a lawyer, though, and I would have to get a legal opinion on it.

The CHAIRMAN. Do you believe that the original intent of Congress was to grant tax exemptions to foundations for the purpose of spending their money overseas?

Secretary DILLON. Oh, I think clearly it was, because the Rockefeller Foundation has been spending money overseas since its foundation and I have not heard any Congressional criticism or any mention of that in any of the tax writing committees.

Now, they may feel at present that too much money is being spent. Congress may at any time change their view, but certainly I don't think when it was originally done there was any prohibition against spending appropriate amounts abroad of contributions made by individuals.

The CHAIRMAN. In other words, you think it is all right for a foundation to get an exemption from the United States and thereby acquire legal use of what would otherwise go into the Treasury of this country, and use that money to help other governments abroad?

Secretary DILLON. Certainly, the Rockefeller Foundation, as I said before, has for many years worked to eradicate disease around the world, and to the extent they may help a foreign government by helping its people, that can be said to help the foreign government. It is really a question of humanity, and trying to improve the health and wellbeing of human beings around the world who are not able to help themselves.

It is the exact same principle as our Point IV program and our technical assistance program that we have had for many years as government programs, and certainly they have been approved year after year and are still being approved, so I can't see why the government would feel that private individuals or private foundations should not do the same thing and relieve the government to that extent from having to do it itself.

The CHAIRMAN. Mr. Roosevelt would like to ask a question or make a statement.

Mr. ROOSEVELT. Mr. Chairman, I want to say I completely agree with the Secretary in his statement which he has just concluded and I feel very strongly that while of course the matter can be overdone and if a foundation is not giving it in the field of humanitarian purposes, that this could be properly criticized, but as far as I am concerned, there is no legitimate criticism that I have run across of any

of the money which has been spent, whether it be in Latin America or whether it be in Africa or whether it be in various places from the foundations which have been named that was not for a specific purpose, which was distinctly in the interest of the United States, in our over-all program to help free people remain free. I would regret greatly if this investigation in any way was used as an effort to try to stop this kind of assistance, which otherwise is going to put an additional burden on all the taxpayers of the United States in the way of direct foreign aid.

I feel that this is a proper thing that has been done by the foundations, and I certainly hope that there is no criticism implied in what they have done in this area.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether their activities may be contributing to the drain of United States gold reserves abroad?

Secretary DILLON. We have naturally an interest in the balance of payments situation, but we have felt that to the extent that funds are used in under-developed countries, they are merely substituting for government funds that would have to be used for the same purpose, and therefore we have not felt that it was wise or proper to put any limits on that. We have a number of laws in which the Congress has exempted underdeveloped countries from provisions which restrict investment, for instance, in other parts of the world. The latest was the 1962 act dealing with taxation of foreign income which exempted under-developed country investments in that area. I think the great majority of these foundations' expenditures are in under-developed areas and are therefore proper.

The CHAIRMAN. During your term of office, Mr. Secretary, has the Treasury, on its own initiative, ever forwarded to Congressional committees, the White House, or other government departments information regarding any foundation's activities which may be contributing to our balance of payments problems?

Secretary DILLON. I don't know of any that we have found or we have forwarded.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether they are making loans overseas that may be contributing to our balance of payments problems?

Secretary DILLON. I don't think that there is that form of specific examination because we have no legal right to tell them not to do that. They have the same legal right as any other American to make loans or buy securities. I would hope they wouldn't do it, but they have a perfect right if they wish.

The CHAIRMAN. During your term of office, has the Treasury, on its own initiative, ever forwarded to Congressional committees, the White House, or other government departments information regarding foreign loans of foundations which may be contributing to our balance of payments problems?

Secretary DILLON. No. We don't know of any substantial ones, and I am sure we have never forwarded such information anyway.

The CHAIRMAN. Would you agree that foreign loans by foundations amounts to a government subsidy being used without government control in conflict with government policy?

Secretary DILLON. No, I don't think so. It is merely an investment of their funds. As I say, I would hope they would not invest them abroad at a time when we are in balance of payments difficulties and I would hope most foundations follow that procedure.

The CHAIRMAN. During the 1961 balance-of-payments crisis, the Ford Foundation loaned \$33 million overseas—some of the loans to industrial nations like France, Belgium and Canada. Would you agree that the Ford Foundation loans to foreign corporations and governments create a some what bewildering paradox?

Secretary DILLON. No. I would say they hurt our balance of payments at the time they were made, but I understand that the Ford Foundation, since then, has desisted from this form of operation and has not been making investments overseas of that nature in more recent years.

The CHAIRMAN. Our government brought home soldiers' families so as to save dollars overseas. Yet the Ford Foundation exported \$33 million in 1961. Hence, part of the dollars we saved by separating our soldiers from their families was sent back overseas by the Ford Foundation. And the irony is that the Ford Foundation operates on a subsidy from the taxpayers—in the form of tax exemption.

In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine the purpose of their loans to foreign corporations and governments?

Secretary DILLON. I don't think so, no.

The CHAIRMAN. During the term of your office has the Treasury, on its own initiative, ever forwarded to Congressional committees, the White House, or other government departments information regarding the purpose of foundation loans to foreign corporations and governments?

Secretary DILLON. Not that I know of.

The CHAIRMAN. Will you agree that if the loans are used by foreign businesses—which are not bound by our antitrust statutes—to help them gain entry to our market, these foreign firms have a competitive advantage?

Secretary DILLON. If they are made a loan at the standard rate of interest, I don't think they have any particular competitive advantage, if they get it from a foundation or a bank, I don't think it makes any difference.

The CHAIRMAN. Would you agree that trade practices in the United States and the Common Market are quite different?

Secretary DILLON. I certainly would.

The CHAIRMAN. Would you agree that, in Europe, industry cartels can cut up the United States market, assigning to certain members exclusive territorial rights in certain sections of this country, and that our businesses cannot do this without facing violating of our antitrust laws?

Secretary DILLON. Yes. The antitrust concept is only rather new in Europe. They are trying to develop some antitrust laws in the

Common Market, but I don't think they will go anywhere near as far as ours.

The CHAIRMAN. Would you agree the foundations' loans to foreign corporations could conceivably be helping our foreign competitors who are not bound by the Sherman Act, the Robinson-Patman Act, et cetera?

Secretary DILLON. Well, any loan by an American to a foreign corporation presumably helps the foreign corporation, or they wouldn't make the loan, so to the extent that they are made by a foundation, it would also help.

The CHAIRMAN. I shall ask Mr. Olsher to continue.

Mr. OLSHER. As you know, the Ford Foundation and the Ford Motor Company have a rather substantial mutual interest. In January and February 1962, the Company acquired from the Foundation a large block of the Company's common stock and in turn disposed of it to the Deutsche Bank of West Germany.

Here is the story as submitted to us by the Ford Foundation.

The Ford Foundation states that, in the spring of 1961, it initiated discussions with Mr. Hermann J. Abs of the Deutsche Bank respecting the possibility of either placing some shares of Ford Motor Company stock with large investors in Germany or, possibly, making a public offering.

The following are quotes from a Ford Foundation letter to me:

"After studying the matter, Mr. Abs became convinced that a public offering could be made. He stated that considerably more stock could be sold in Germany if the stock were to be listed on one or more German stock exchanges. Since the only organization that can make application for such listing is the issuer itself, namely, Ford Motor Company, the Foundation approached that company to see whether it would be willing to make the application and incur the expense of listing on one or more German exchanges. The Company indicated that it was interested in exploring that matter.

"The terms of the proposed sale and public offering in Germany by a syndicate headed by the Deutsche Bank were negotiated in November, 1961, between the representatives of that bank and the Foundation at the Foundation's offices in New York. It developed during the course of the discussions with Ford Motor Company concerning listing and concerning the obtaining of common shares for the Deutsche Bank, that the Company which has subsidiaries in Germany and many other areas of the world, could use the foreign exchange proceeds from such a sale in furthering the Company's business interests abroad."

On January 17, 1962, the Ford Foundation executed a contract with the Deutsche Bank to sell up to 500,000 shares Ford Motor Company Class A stock owned by it to the Bank for the purpose of an offering for sale by the Bank and a syndicate of German banks formed by it in West Germany of the shares of common stock of Ford Motor Company to be obtained by the Bank from the Company in exchange for the shares of Class A stock purchased by the Bank. The purchase price of the shares to be purchased by the Bank was fixed by the contract at the market price of Ford common stock on the New York Stock Exchange prevailing at the time when the Bank gave notice of the take-down, less a discount of 5.25 percent on the first 250,000 shares and less a discount of \$2 per share on any additional shares purchased.

The Foundation, by assignment dated January 23, 1962, with the Bank's consent, assigned the Foundation's rights under the contract to Ford Motor Company on the condition that the Company agreed to sell directly to the Bank authorized but unissued common stock on the same terms that the Foundation had agreed to sell Class A stock to the Bank and to purchase from the Foundation simultaneously with the issue and sale of such shares to the Bank an equal number of shares of Class A stock at the same price per share which the Company received for the common stock sold to the Bank. The Company also undertook to apply for the listing of its common stock on one or more German exchanges.

Pursuant to the contract, the Bank took down 150,000 shares on January 25, 1962 at \$98.54 per share and 100,000 shares on January 30, 1962 at the same price for settlement on February 5, 1962; 30,000 shares were taken down on February 19, 1962 at \$103.75 and 8,000 shares on February 21, 1962 at \$105.50 per share for settlement on February 28, 1962. On each settlement date the Foundation sold an equal number of shares of Class A stock to the Company at the same purchase price per share.

The Deutsche Bank Syndicate marketed the common stock abroad.

The following describes the Foundation's proceeds, expense of sale, and gain realized from the sale: Number of shares 288,000; gross proceeds \$28,591,500; expenses of sale \$32,148.38; gain \$26,831,351.62.

In the course of its administration of the various regulations concerning foundations, has the Treasury examined the Ford-Deutsch Bank transaction to determine whether it was set up for the purpose of avoiding taxation of foreign earnings?

Secretary DILLON. Mostly not. I would like to say though, that from everything you have said that is a transaction which was eminently in the interests of the United States, and we are delighted that the Ford Foundation and the Ford Motor Company did it. We are strongly in favor of companies trying to raise money for their operations abroad, raising it abroad, rather than transferring it from the United States. In this case this is what happened. The Ford Motor Company stock was sold to German investors. Funds were raised, and it enabled Ford subsidiaries abroad to expand, and in that way the money came from Germany rather than coming from the United States and affecting our balance of payments.

There has just been a very distinguished committee which studied how it would be possible to get foreigners to invest more heavily in the United States, to help our balance of payments, which was headed by the former Under Secretary of the Treasury, Mr. Fowler, which reported to the President a little while ago. One of the chief recommendations was that large international companies should try to increase the ownership of their companies abroad, by selling their stock abroad.

That is what happened here clearly. From the point of view of the foundation, it also represented some liquidation of the tremendous concentration they had in Ford Motor Company stock, and I would think it was probably desirable from that point of view also.

Mr. OLSHER. Mr. Secretary, may I also ask you whether there is any indication or evidence that there was any attempt to evade taxes on foreign profits?

Secretary DILLON. No, not the slightest from what I have heard. I don't think it has any relation to it.

Mr. OLSHER. As you know, Mr. Secretary, a new Federal law went into effect on January 1, 1963 with respect to "tax havens." The new law provides that income of certain United States controlled foreign subsidiaries will be taxed to their United States parents when earned instead of when brought home as dividends. However, it is my understanding that earnings of a foreign subsidiary are subject to immediate tax only if more than 50 per cent of its voting stock is owned by United States taxpayers. As a result I understand that some foreign United States parent companies have been selling stock to foreigners in order to cut their foreign holdings down to 50 per cent. One way to avoid such taxation would be for a United States parent to sell part of its stock in an overseas corporation to a foreigner in its employ.

During your term of office has the Treasury, on its own initiative, forwarded to the SEC information regarding the Ford-Deutsche Bank transaction?

Secretary DILLON. No, but it bears no relation to what you just said about the 1962 Act. It bears no relation whatsoever. I would just like to make that clear.

Mr. OLSHER. It seems to me that a direct and logical approach would have been for the Foundation to exchange Ford Motor Company Class A stock for common stock and then sell the common stock, or have the Ford Motor Company sell its common stock and use the proceeds to buy Class A stock for the Foundation.

Has the Treasury examined this transaction to determine the benefits derived by the Ford Foundation and the Ford Motor Company from taking the indirect approach in making the sale to the Deutsche Bank?

Secretary DILLON. I don't see any difference between the Ford Foundation acquiring common stock from the Ford Motor Company in return for Class A stock, and then selling it to the Deutsche Bank, or doing it the other way around, selling their Class A stock to the Ford Company and then the Ford Company then selling their common stock to the Deutsche Bank. I don't think there are any benefits involved at all.

Mr. OLSHER. What was the gain to the Ford Foundation and the Ford Motor Company from using a foreign syndicate instead of an American underwriting?

Secretary DILLON. I think the gain was perfectly clear. If they wanted to sell their securities to Germans, probably they could do it to better advantage by using Germans to sell to Germans than by using an American banker in New York to sell to Germans.

Mr. OLSHER. How did the Ford Foundation or the Ford Motor Company benefit from marketing the stock abroad instead of in this country?

Secretary DILLON. The Ford Motor Company benefited by raising money abroad, German money rather than having to transfer their own American money overseas for further investment. That also greatly helped our balance of payments.

Mr. OLSHER. Was there anything that the Ford Foundation or the Ford Motor Company could not do directly that became possible under this involved mechanism?



Secretary DILLON. No, I don't think so.

Mr. OLSHER. Has the Treasury examined this transaction to determine whether it may have been a device to reduce the Ford Motor Company's equity in its European subsidiary or subsidiaries to a point where only dividends actually received from such foreign companies rather than their profits, are subject to Federal income tax?

Secretary DILLON. It had nothing to do with the Ford Motor Company's equity in their subsidiary. It was merely a sale of Ford Motor Company stock of the United States to Germans. It has nothing to do with their interest in a subsidiary.

Mr. OLSHER. Has the Treasury examined this transaction to determine whether it resulted in any income tax advantage to the Ford Motor Company?

Secretary DILLON. No, I don't think we have, but certainly that will be examined in the course of the regular examination of the income tax returns of the Ford Motor Company which are examined every year.

Mr. OLSHER. Is this Ford Foundation-Ford Company transaction an isolated instance or are there other similar arrangements which might involve foreign affiliates or subsidiaries?

Secretary DILLON. Well, since this did not involve a foreign affiliate or a foreign subsidiary, I don't quite understand your question. But I think it was probably that there are not many of this nature because there are not many situations that are similar to the Ford situation.

A very substantial part of the stock of the company is owned by a foundation, and it is a world-wide company that is interested in raising money for operations abroad. So I don't think there would be many similar situations. I am very glad, as I say, that the Ford Motor Company took this tack and we are trying to persuade other companies to do the same thing, although there is no connection there with foundations.

Mr. OLSHER. Didn't this involve the foreign affiliates of the Ford Motor Company?

Secretary DILLON. No.

Mr. OLSHER. The Ford Motor Company has substantial foreign interests.

Secretary DILLON. Yes, but this has nothing to do with it.

Mr. OLSHER. Nothing at all?

Secretary DILLON. No. It is selling the parent company's stock.

Mr. OLSHER. Mr. Chairman, may I make an inquiry as to how long we are going to proceed. It is now ten minutes of six.

(Discussion off the record.)

The CHAIRMAN. Would you agree that stock of our industrial and commercial enterprises is to an ever-increasing degree passing into the hands of tax-exempt foundations?

Secretary DILLON. I think that as foundations go and get stock it is true that more of it is passing into their hands. I think that is a correct statement.

The CHAIRMAN. Would you agree that this offers boundless temptations and opportunities?

Secretary DILLON. I don't think that stock that is passing into the hands of foundations year by year is anywhere near as important in volume as the stock that is passing into the hands of other tax-exempt

organizations such as pension funds, things of that nature, which are growing even more rapidly.

The CHAIRMAN. Would you agree that many foundations have unlimited powers to buy, sell, and speculate in stocks, just as if they were private investment corporations of boundless powers with no public duties or responsibilities, and not dependent on public confidence?

Secretary DILLON. I think they generally have unlimited powers to buy and sell, and that would presumably give them the powers to speculate if they so desire, although I think that is an undesirable practice.

The CHAIRMAN. Would you agree that a foundation can serve as a holding company device, Mr. Secretary?

Secretary DILLON. I would think that that would be possible, yes. I don't know whether it has been done, but it may well have been done.

The CHAIRMAN. Here is an example of a foundation being used as a holding company device.

During the period of 1954 through 1961 the Standard Oil Company of Indiana donated to the Standard Oil Foundation of Chicago 489,250 shares of Midwest Oil Corporation common voting stock, carrying value \$17,024,750. Undoubtedly Standard Oil took its maximum charitable deduction for this donation.

During the period of 1954 through 1963, the Foundation received from Midwest Oil cash dividends of \$4,111,921.70 and stock dividends of \$2,449,756.01.

Subsequently Standard Oil Company of Indiana decided that it would like to have the shares back in its portfolio. So, on April 15, 1964, the Standard Oil Company of Indiana purchased the shares from the Foundation for \$37,488,781. Such shares represented 20.15 percent of the outstanding stock of Midwest Oil Corporation.

I shall ask Mr. Olsher to continue.

Mr. OLSHER. In 1919 the Rockefeller Foundation received a donation of Standard Oil Company of New Jersey common stock. The number of shares involved in this transaction is unknown to us. As a result of stock dividends and splits, the original donation resulted in 1 million shares as of February 23, 1962, which the Foundation carried on its books at \$5,173,006.20. Then, in 1962 the Standard Oil Company of New Jersey decided that it wanted the shares. So, on February 23, 1962, the Foundation sold the 1 million shares to Standard Oil Company of New Jersey for \$52,250,000 showing a gain of \$47,013,093.80 after expense of sale.

We queried Standard Oil Company of New Jersey with respect to its purchase of these shares, and were advised as follows:

These shares were added to those which were already held in our Treasury, and which were used from time to time for various corporate purposes, including the satisfaction of options granted under the Company's Incentive Stock Option Plan when requested by optionees. The principal use of Treasury shares during 1962 has involved 1,451,820 shares which our affiliate, Humble Oil and Refining Company, exchanged for the assets and business of the Olin Oil & Gas Corporation.

Subsequently we directed another inquiry to Standard Oil Company of New Jersey with respect to its use of these shares and received the following information:

These shares were added to those which were already held in our Treasury, and thereupon ceased to maintain any separate identity.

However, if a first-in-first-out concept is applied it could be said that 297,615 of the 1,000,000 shares were included in the 1,415,820 shares which were exchanged on June 13, 1962, by our affiliate, Humble Oil & Refining Company, for the assets and business of the Olin Oil & Gas Corporation. The shares used in the Olin acquisition were charged to Humble and valued by Humble at a price of \$46.875 per share which represents the closing price of Jersey stock on the New York Stock Exchange on November 13, 1961, the date on which the Letter of Intent between companies was signed. The shares were transferred into the name of Olin Oil & Gas Corporation on June 13, 1962, on behalf of the Humble Oil & Refining Company.

During the period from June 13 to the close of business on November 30, an additional 235,157 shares have been used for various corporate purposes as follows:

- (a) 189,638 shares were used to satisfy options granted under the company's incentive Stock Option Plan as requested by optionees:

<i>Date of option grant</i>	<i>Number of shares sold to optionees</i>	<i>Option price paid by optionees</i>
12/3/59	7,300	49.25
7/7/60	3,000	41.50
9/22/60	179,338	40.38
	<u>189,638</u>	

- (b) 45,519 shares have been used for various corporate acquisitions at prices between \$50.625 and \$54.75 per share.

On August 31, 1961, four of the Nation's largest banks sold control (60 percent) of the Discount Corp. of New York, a primary dealer in U.S. Government securities, bankers acceptances, and negotiable time certificates of deposit. The banks disposed of their private placement to institutional investors. The number of shares owned and sold by each selling stockholder is as follows:

	<i>Shares</i>
International Banking Corp. (a wholly owned subsidiary of the First National City Bank of New York)-----	9,998
Bankers Trust Co.-----	4,999
Morgan Guaranty Trust Co. of New York Charitable Trust-----	9,739
The Chemical Bank New York Trust Foundation-----	4,998
Total-----	<u>29,734</u>

According to press reports, the four banks decided to sell their shares because their control of Discount Corp. was inviting Justice Department investigation.

In our report of December 31, 1962 to the Subcommittee, we cited in some detail the establishment during 1961, of so-called charitable foundations by two of the banks: Morgan Guaranty Trust Co. of New York, and Chemical Bank New York Trust Company. Judging from the information submitted by the banks, it would appear that they had created foundations for the express purpose of selling their shares of Discount Corp. through their foundations so as to avoid large capital gains taxes.

Although our report of December 31, 1962 contained considerable detail on these transactions, it did not carry the names of the buyers of

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the stock of Discount Corp. of N.Y. We now submit for the record the names and addresses of those organizations that purchased the stock on August 31, 1961.

Five Rockefeller-controlled organizations purchased 6,100 of the 29,734 shares sold, or approximately 21 percent. The Rockefeller-controlled shares represent 12 percent of the 50,000 shares outstanding on August 31, 1961. Following are the Rockefeller-controlled purchasers:

	<i>Shares</i>
Rockefeller Institute.....	1,500
Rockefeller Brothers Foundation.....	1,500
Colonial Williamsburg, Inc.....	1,000
Sleepy Hollow Restorations, Inc.....	500
Chase Manhattan Bank.....	1,600
<b>Total.....</b>	<b>6,100</b>

So, a substantial part of the shares of Discount Corp. of New York moved from four New York banks to the Rockefellers, who control the Chase Manhattan Bank. Additionally, 3,000 shares were purchased by the Donner Foundation of Philadelphia (now known as the Independence Foundation).

On August 31, 1961, Bankers Trust Company, New York City, sold 4,999 shares of Discount Corporation of New York capital stock to the purchasers listed below.

<i>Purchaser</i>	<i>Number of shares</i>
Yale University, Treasurer's Office, Drawer 1304A, Yale Station, New Haven, Connecticut.	504
Companies of the Royal-Globe Group.....	454
American and Foreign Insurance Company, Limited.	
The British & Foreign Marine Insurance Company, Limited.	
Globe Indemnity Company.	
The Liverpool & London & Globe Insurance Company, Limited.	
Newark Insurance Company.	
Queen Insurance Company of America.	
Royal Indemnity Company.	
Royal Insurance Company, Limited.	
Thames and Mersey Marine Insurance Company, Limited.	
150 William Street, New York 38, New York.	
General Insurance Company of America, 4347 Brooklyn Avenue, N.E., Seattle 5, Washington	151
General America Employees Profit Sharing Retirement Trust, Seattle First National Bank Trustee, 4347 Brooklyn Avenue, N.E., Seattle 5, Washington	84
Philadelphia National Bank, Account No. 70,027, Philadelphia National Bank Retirement Fund, Philadelphia 1, Pennsylvania	84
Donner Foundation, Inc., 2500 Philadelphia National Bank Building, Philadelphia 7, Pennsylvania	504
Indianapolis Life Insurance Company, 2960 North Meridian Street, Indianapolis 7, Indiana	84
American Electric Power System Retirement Trust, 2 Broadway, New York 8, New York	168
The Rockefeller Institute, 30 Rockefeller Plaza, Room 5600, New York 21, New York	252
Rockefeller Brothers Fund, Inc., 30 Rockefeller Plaza, Room 5600, New York 21, New York	252
Colonial Williamsburg, Incorporated, 30 Rockefeller Plaza, Room 5600, New York 21, New York	168
Sleepy Hollow Restorations, Inc., 30 Rockefeller Plaza, Room 5600, New York 21, New York	84
Security First National Bank, Trust Department—Trust B-1520, 561 South Spring Street, Los Angeles 54, California.	84

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Old Colony Trust Company (Two Purchases), Trustee for Various Pension Funds, 1 Federal Street, Boston 5, Massachusetts.	403
Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge 39, Massachusetts.	252
Trustees of Dartmouth College, P.O. Box 31, Hanover, New Hampshire...	252
Massachusetts General Hospital, 45 Milk Street, Boston, Massachusetts...	168
State Street Bank and Trust Co., Trustee under H. P. Hood and Sons, Profit Sharing Trust General Fund Acct. A, State and Congress Streets, Boston, Massachusetts.	23
Calvert Fire Insurance Company, Commercial Credit Building, Baltimore 2, Maryland.	84
Whitelaw & Co., c/o The National City Bank of Cleveland, East 6th & Euclid Avenue, Cleveland 1, Ohio.	126
Chesapeake & Ohio Railway Company, Employees Pension Plan Trust Fund, 2800 Terminal Tower, P.O. Box 5507, Cleveland 1, Ohio.	126
The Chase Manhattan Bank (3 purchases), 1 Chase Manhattan Plaza, New York 5, New York.	272
U.S. Trust Co., a/c Hampton Institute, Permanent Endowment, 45 Wall Street, New York 5, New York.	84
State of Wisconsin Investment Board, State Capitol, Madison 2, Wisconsin	336

On August 31, 1961, Morgan Guaranty Trust Company of New York Charitable Trust sold 9,739 shares of Discount Corporation of New York capital stock to the purchasers listed below.

<i>Purchaser</i>	<i>Number of Shares</i>
American Electric Power System Retirement Trust, 2 Broadway, New York 8, New York.	328
Calvert Fire Ins. Co., Commercial Credit Bldg., Baltimore 2, Maryland....	164
The Chase Manhattan Bank (3 purchases), 1 Chase Manhattan Plaza, New York 5, New York.	522
Chesapeake & Ohio Railway Company, Employees Pension Plan Trust Fund, 2800 Terminal Tower, P.O. Box 5507, Cleveland 1, Ohio.	246
Colonial Williamsburg, Incorporated, 30 Rockefeller Plaza, Rm. 5600, New York 21, New York.	328
Trustees of Dartmouth College, P.O. Box 31, Hanover, New Hampshire...	491
Donner Foundation, Inc., 2500 Philadelphia National Bank Bldg., Philadelphia 7, Pennsylvania.	983
General American Employees Profit Sharing Retirement Trust, Seattle First National Bank Trustee, 4347 Brooklyn Avenue, N.E., Seattle 5, Washington.	164
General Insurance Company of America, 4347 Brooklyn Avenue, N.E., Seattle 5, Washington.	295
Indianapolis Life Insurance Company, 2960 North Meridian Street, Indianapolis 7, Indiana.	164
Massachusetts General Hospital, 45 Milk Street, Boston, Massachusetts...	328
Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge 39, Massachusetts.	491
Old Colony Trust Company, Trustee for Various Pension Funds (2 purchases), 1 Federal Street, Boston 5, Massachusetts.	787
Philadelphia National Bank, Account No. 70,027, Philadelphia National Bank Retirement Fund, Philadelphia 1, Pennsylvania.	164
Rockefeller Brothers Fund, Inc., 30 Rockefeller Plaza, Rm. 5600, New York 21, N.Y.	491
The Rockefeller Institute, 30 Rockefeller Plaza, Rm. 5600, New York 21, New York.	491
Royal Globe Group (consisting of companies listed below), 150 William Street, New York 38, N.Y.	884
American and Foreign Insurance Company, Limited.	
The British & Foreign Marine Insurance Company, Limited.	
Globe Indemnity Company.	
The Liverpool & London & Globe Insurance Company, Limited.	
Newark Insurance Company.	
Queen Insurance Company of America.	
Royal Indemnity Company.	
Royal Insurance Company, Limited.	
Thames and Mersey Marine Insurance Company, Limited.	

Security First National Bank, Trust Department, Trust B-1520, 561 South Spring Street, Los Angeles 54, California, As agent for Diocesan Investment Trust.	164
Sleepy Hollow Restorations, Inc., 30 Rockefeller Plaza, Rm. 5600, New York 21, New York.	164
State Street Bank and Trust Co., Trustee Under H. P. Hood and Sons, Profit Sharing Trust General Fund, Acct. A, State and Congress Streets, Boston, Massachusetts.	43
U.S. Trust Co., a/c Hampton Institute, Permanent Endowment, 45 Wall Street, New York 5, New York.	164
Whitelaw & Co., c/o The National City Bank of Cleveland, East 6th & Euclid Avenue, Cleveland 1, Ohio.	245
State of Wisconsin Investment Board, State Capitol, Madison 2, Wisconsin.	655
Yale University, Treasurer's Office, Drawer 1304-A, Yale Station, New Haven, Connecticut.	983

On August 31, 1961, The Chemical Bank New York Trust Foundation sold 4,998 shares of Discount Corporation of New York capital stock to the purchasers listed below.

<i>Purchaser</i>	<i>Number of shares</i>
Yale University, Treasurer's Office, Drawer 1304A, Yale Station, New Haven, Connecticut.	504
Companies of the Royal-Globe Group, 150 William Street, New York 38, New York.	454
General Insurance Company of America, 4347 Brooklyn Avenue, N.E., Seattle 5, Washington.	151
General America Employees Profit Sharing Retirement Trust, Seattle First National Bank Trustee, 4347 Brooklyn Avenue, N.E., Seattle 5, Washington.	84
Philadelphia National Bank, Account No. 70,027, Philadelphia National Bank Retirement Fund, Philadelphia 1, Pennsylvania.	84
Donner Foundation Inc., 2500 Philadelphia National Bank Building, Philadelphia 7, Pennsylvania.	504
Indianapolis Life Insurance Company, 2960 North Meridian Street, Indianapolis 7, Indiana.	84
American Electric Power System Retirement Trust, 2 Broadway, New York 8, New York.	168
The Rockefeller Institute, 30 Rockefeller Plaza, Room 5600, New York 21, New York.	252
Rockefeller Brothers Fund, Inc., 30 Rockefeller Plaza, Room 5600, New York 21, New York.	252
Colonial Williamsburg, Incorporated, 30 Rockefeller Plaza, Room 5600, New York 21, New York.	168
Sleepy Hollow Restorations, Inc., 30 Rockefeller Plaza, Room 5600, New York 21, New York.	84
Security First National Bank Trust Department, Trust B 1520, 561 South Spring Street, Los Angeles 54, California.	84
Old Colony Trust Company (Two separate agreements), Trustee for Various Pension Funds, 1 Federal Street, Boston, Massachusetts.	403
Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge 39, Massachusetts.	252
Trustees of Dartmouth College, Post Office Box 31, Hanover, New Hampshire.	252
Massachusetts General Hospital, 45 Milk Street, Boston, Massachusetts.	168
State Street Bank and Trust Co., Trustee under H. P. Hood and Sons Profit Sharing Trust General Fund, Acct. A, State and Congress Streets, Boston, Massachusetts.	23
Calvert Fire Insurance Company, Commercial Credit Building, Baltimore 2, Maryland.	84
Whitelaw & Co., c/o The National City Bank of Cleveland, East 6th & Euclid Avenue, Cleveland 1, Ohio.	126
Chesapeake & Ohio Railway Company, Employees Pension Plan Trust Fund, 2800 Terminal Tower, P.O. Box 5507, Cleveland 1, Ohio.	126
The Chase Manhattan Bank (Three separate agreements), 1 Chase Manhattan Plaza, New York 5, New York.	271

U.S. Trust Co., a/c Hampton Institute, Permanent Endowment, 45 Wall Street, New York 5, New York. 84  
State of Wisconsin Investment Board, State Capitol, Madison 2, Wisconsin. 336

On August 31, 1961, The International Banking Corporation, New York City, sold 9,998 shares of Discount Corporation of New York capital stock to the purchasers listed below.

<i>Purchaser</i>	<i>Number of shares</i>
Yale University, Treasurer's Office, Drawer 1304A—Yale Station, New Haven, Connecticut.	1,009
Royal Globe Group, 150 William Street, New York 38, N.Y.-----	908
Included in the Royal Globe Group are:	
American and Foreign Insurance Company, Limited	
The British & Foreign Marine Insurance Company, Limited	
Globe Indemnity Company	
The Liverpool & London & Globe Insurance Company, Limited	
Newark Insurance Company	
Queen Insurance Company of America	
Royal Indemnity Company	
Royal Insurance Company, Limited	
Thames and Mersey Marine Insurance Company, Limited	
General Insurance Company of America, 4347 Brooklyn Avenue, N.E., Seattle 5, Washington.	303
General America Employees Profit Sharing Retirement Trust, Seattle First National Bank Trustee, 4347 Brooklyn Avenue, N.E., Seattle 5, Washington.	168
Philadelphia National Bank, Account No. 70,027, Philadelphia National Bank Retirement Fund, Philadelphia 1, Pennsylvania.	168
Donner Foundation Inc., 2500 Philadelphia National Bank Bldg., Philadelphia 7, Pennsylvania.	1,009
Indianapolis Life Insurance Company, 2960 North Meridian Street, Indianapolis 7, Indiana.	168
American Electric Power System Retirement Trust, 2 Broadway, New York 8, N.Y.	336
The Rockefeller Institute, 30 Rockefeller Plaza, Rm. 5600, New York 21, N.Y.	505
Rockefeller Brothers Fund, Inc., 30 Rockefeller Plaza, Rm. 5600, New York 21, N.Y.	505
Colonial Williamsburg, Incorporated, 30 Rockefeller Plaza, Rm. 5600, New York 21, N.Y.	336
Sleepy Hollow Restorations Inc., 30 Rockefeller Plaza, Rm. 5600, New York 21, N.Y.	168
Diocesan Investment Trust, By-Security First National Bank Trust Dept., Trust B 1520, 561 South Spring Street, Los Angeles 54, California, as Agent for said Diocesan Investment Trust.	168
Old Colony Trust Company (2 purchases), Trustee for Various Pension Funds, 1 Federal Street, Boston 5, Massachusetts.	807
Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, Massachusetts (89).	505
Trustees of Dartmouth College, P.O. Box 31, Hanover, New Hampshire----	505
Massachusetts General Hospital, 45 Milk Street, Boston, Massachusetts----	336
State Street Bank and Trust Co., Trustee Under H. P. Hood and Sons Profit Sharing Trust General Fund Acct. A, State and Congress Streets, Boston, Massachusetts.	45
Calvert Fire Ins. Co., Commercial Credit Bldg., Baltimore 2, Maryland----	168
Whitelaw & Co., c/o The National City Bank of Cleveland, East 6th & Euclid Avenue, Cleveland 1, Ohio.	253
Chesapeake & Ohio Railway Company, Employees Pension Plan Trust Fund, 2800 Terminal Tower, P.O. Box 5507, Cleveland 1, Ohio.	252
The Chase Manhattan Bank (3 purchases), 1 Chase Manhattan Plaza, New York 5, N.Y.	535
U.S. Trust Co., a/c Hampton Institute, Permanent Endowment, 45 Wall Street, New York 5, N.Y.	168
State of Wisconsin Investment Board, State Capitol, Madison 2, Wisconsin.	673

Secretary DILLON. I would just like to make one comment about the transaction regarding the Rockefeller Foundation and Standard Oil stock. As I understood it, the Rockefeller Foundation held that stock for over 40 years and at the end of the 40-odd year period found it advisable that they could sell at a good price, and sold to the Standard Oil Company of New Jersey, which then used it as it saw fit.

I don't see anything wrong in that from the point of view of the Rockefeller Foundation. I would just like to make that clear.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether there may be a conflict of interest between the advisory roles the foundation individuals hold as trustees, directors or officers, and their private financial and business interests?

Secretary DILLON. I think if we should have a very clear-cut rule against self-dealing, that problem will be solved by itself, because there couldn't be any such conflict.

The CHAIRMAN. During your term of office, has the Treasury, on its own initiative, ever forwarded to Congressional committees, the White House, or other government departments, information regarding possible conflict of interest between the advisory roles foundation individuals hold as trustees, directors or officers and their private financial and business interests?

Secretary DILLON. Not to my knowledge, but I think you would have to ask the IRS to be certain.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether there is interlock between the foundation directors, their investment counsels, and brokers?

Secretary DILLON. I would doubt that, but I would again have to ask IRS for full details on that. They probably do in certain cases when they think that the transactions are improper.

The CHAIRMAN. During your term of office has the Treasury, on its own initiative, ever forwarded to Congressional committees, the White House, or other government departments information regarding interlock between foundation directors, their investment counsels and brokers?

Secretary DILLON. Not that I know of, but you will have to ask the IRS, and I don't know just why we would forward such information.

The CHAIRMAN. Would you agree that interlock between foundations' directors, their investment counsels, and brokers could not only raise conflict-of-interest problems, but would allow a tightly-knit group to operate with great power?

Secretary DILLON. It depends on how the foundations operate. If they speculate or use the foundation for business purposes, it certainly would. But I think the way to cure it is in legislation that would deal with what are proper operations by foundations.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether there is a conflict of interest between the duties of a foundation's directors and trustees, and their interests as officers, stockholders, and employees of business corporations whose stock is controlled by the foundation?



Secretary DILLON. I don't think there is any particular examination of that nature at present, but again I think that might come under the self-dealing rule.

The CHAIRMAN. During the term of your office has the Treasury, on its own initiative, ever forwarded to Congressional committees, the White House, or other government departments information regarding possible conflict of interest between the duties of a foundation's directors and trustees and their interests as officers, stockholders, and employees of business corporations whose stock is controlled by the foundation?

Secretary DILLON. Not that I know of.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether there is any foundation favoritism in investments?

Secretary DILLON. I don't quite understand what that question means, but I don't think that they do.

The CHAIRMAN. During your term of office has the Treasury, on its own initiative, ever forward to Congressional committees, the White House, or other departments information regarding foundation favoritism in investments?

Secretary DILLON. Not that I know of.

The CHAIRMAN. Would you agree that common action on the part of the foundations and associates in the purchase and sale of securities could limit opportunities for certain companies—for example, that this could hinder stock financing of small business and thus slow down their expansion plans?

Secretary DILLON. I certainly don't think that that should be the case. To the extent that foundations invest their money in business, there is more money available for business, so it should help by making money available. But I don't know what the specific instance is. There may be some specific instance you have in mind that I am not aware of.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether there may be common action on the part of foundations and associates in the purchase and sale of securities?

Secretary DILLON. Common action by foundations in the purchase and sale of securities? Not that I know of. You will have to ask the Internal Revenue Service that.

The CHAIRMAN. During your term of office has the Treasury, on its own initiative, ever forwarded to Congressional committees, the White House, or other government departments information regarding common action on the part of foundations and associates in the purchase and sale of securities?

Secretary DILLON. I would doubt it, but you will have to ask the Internal Revenue Service.

The CHAIRMAN. The statutes prohibit a person from serving on the boards of two or more competing organizations, any one of which has assets of \$1 million. Would you agree that the presence, on a foundation board, of members of the boards of competitors carries with it the potential for restraint of competition?

Secretary DILLON. Not necessarily any more than their presence together on the board of a museum or an educational institution or their service together in a vestry of a church would have the same connotation.

The CHAIRMAN. In the course of its administration of various regulations concerning foundations, does the Treasury examine the foundations to determine whether the foundations are channeling income and corpus in a direction that may hurt competitors and investors?

Secretary DILLON. I think that IRS would have to answer that, but I think all they look at is to see whether the foundations are following the tax law, and I don't know whether that would be applicable in that case.

The CHAIRMAN. During your term of office has the Treasury, on its own initiative, ever forwarded to Congressional committees, the White House, or other government departments information regarding foundations' channeling income and corpus in a direction that may hurt competitors and their investors?

Secretary DILLON. Not that I know of, but we would have to ask the IRS to be sure.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether a foundation's services—such as research, market studies, etc., are being made available to certain businesses on a preferential basis?

Secretary DILLON. I don't know of any such cases, and I don't know that the IRS has when they study foundations for tax purposes, whether they look at that or not. You would have to ask the IRS.

The CHAIRMAN. During your term of office has the Treasury, on its own initiative, ever forwarded to Congressional committees, the White House, or other government departments information regarding foundations' services—such as research, market studies, etc., being made available to certain businesses on a preferential basis?

Secretary DILLON. Not to my knowledge, but you have to ask the IRS.

The CHAIRMAN. In the course of its administration of the various regulations concerning foundations, does the Treasury examine the foundations to determine whether foundation income or corpus is being used to grant benefits to a company employee?

Secretary DILLON. You will have to ask the IRS.

The CHAIRMAN. During your term of office has the Treasury, on its own initiative, ever forwarded to Congressional committees, the White House, or other government departments information regarding the use of a foundation's funds to grant benefits to a company employee?

Secretary DILLON. You will have to ask the IRS on that question.

The CHAIRMAN. In your view should a foundation's income or corpus be used to grant benefits to a company's employees?

Secretary DILLON. I would say under ordinary circumstances, no.

The CHAIRMAN. In your view does a company have a competitive advantage where its foundation is permitted to grant benefits to the company's employees?

Secretary DILLON. This is a foundation that is formed by the company. I don't know whether it would give the company any com-

petitive advantage by granting benefits that way or by granting them directly. I just don't know enough about that to know whether there would.

The CHAIRMAN. Would you agree that many of the problems of regulating foundations are similar to the problems encountered in regulating private pension funds which also have tax advantages and which imply or involve a fiduciary relationship?

Secretary DILLON. I think there is some similarity there, yes, Mr. Chairman.

The CHAIRMAN. One of the broad areas of abuses engaged in by certain tax-exempt foundations is what is commonly described as self dealing.

In the ordinary course, would the general run of IRS examiners be expected to have the accounting and auditing knowledge and experience necessary to deal with the intricacies of self dealing?

Secretary DILLON. I think that the men who have now been trained and are working on this do have that knowledge. Of course the problem is that under the law at present this is permitted.

The CHAIRMAN. A second broad area of abuse engaged in by certain tax-exempt foundations is the unreasonable accumulation of income. This is quite unlike the problem of income accumulation by a corporation subject to the income tax.

In the ordinary course would the general run of IRS examiners be expected to have the accounting and auditing knowledge and experience necessary to determine that there had been an unreasonable accumulation of income, particularly where substantial debt and depreciable assets are involved?

Secretary DILLON. I think so. This is an area that the IRS has been fairly active in, as I pointed out earlier this morning, without any great success, because this is an area where it may well be that the penalty, which is revocation of charter, revocation of the tax-exempt status of the foundation, is the only penalty. In cases which we have taken to court, we have been generally unsuccessful, and the courts have been very lenient in describing or in finding unreasonable accumulation.

We feel that there may be some more moderate penalty that better fits the occasion and which would result in better enforcement, as we would like. I think on the whole, however, the record shows that foundations distribute more income—not considering, of course, capital gains—than they receive, because they distribute some of their gifts directly, and some of them are in the process of liquidating. But overall, I think that the record is clear that they distribute more. That doesn't mean that some foundations don't have unreasonable accumulations, and we would like to see that closed up by changes in legislation.

The CHAIRMAN. A third broad area of abuse engaged in by certain tax exempt foundations is speculation in securities and other property.

In the ordinary course, would the general run of IRS examiners be expected to have the knowledge and experience necessary to recognize speculation as against investment, a problem not usually, if at all, encountered in income tax examinations?

Secretary DILLON. You would have to ask the IRS.

The CHAIRMAN. A fourth broad area of abuse engaged in by certain tax exempt foundations is competing with their tax advantage against tax paying entities for interest and rental income.

In the ordinary course, would an IRS examiner have the knowledge and experience necessary to deal with this?

Secretary DILLON. You would have to ask the IRS.

The CHAIRMAN. A fifth broad area of abuse engaged in by certain tax exempt foundations is the manipulation of leases.

In the ordinary course an IRS examiner must necessarily be able to compute the taxable gain or loss in lease transactions. The question is would he have the knowledge and experience necessary to recognize an honest short-term lease as against an arrangement designed to avoid taxation.

Secretary DILLON. I would think so, because these leases are very general in business and real estate, and they occur or have to be examined on many returns, and so I think that knowledge would be available to the average well-informed IRS agent.

The CHAIRMAN. Would you agree that tax-exempt foundation represent a complex area involving tax law, accounting practice, SEC law, and antitrust laws, among other law?

Secretary DILLON. I would certainly agree. It is a very complex and broad area. I certainly agree with you on that, Mr. Chairman.

The CHAIRMAN. How many tax-exempt organizations of all types were there at the close of 1963, Mr. Secretary?

Secretary DILLON. I don't think we have that figure. I think Mr. Caplin has some figures for you tomorrow which, as I understand, run upwards of a quarter of a million tax-exempt organizations.

The CHAIRMAN. Mr. Olsher wants to ask a question.

Mr. OLSHER. The Chairman is referring to tax-exempt organizations of all types.

Secretary DILLON. Yes. I said more than a quarter of a million. Maybe it is even considerably more than that. I know it is very many.

Mr. OLSHER. Would it be one million?

Secretary DILLON. The figures I saw in Mr. Caplin's statement do not indicate they are that high but I think you could probably get better information from him.

Mr. OLSHER. I am referring to all tax-exempt organizations including the organizations that do not come under 501-C.

Secretary DILLON. By that you mean all churches and things of that nature?

Mr. OLSHER. Yes.

Secretary DILLON. It might be very large, yes.

Mr. OLSHER. I think that Mr. Caplin advised us at one point that at the end of 1960 there were pretty close to 1,200,000.

Secretary DILLON. That might be, yes. It might well be, considering each church as a separate entity, which of course it is.

The CHAIRMAN. Would you agree that the present number and size of tax-exempt foundations dictates that consideration should be given to a regulatory agency approach for their supervision?

Secretary DILLON. That is one of the things that is being considered. It may well be that, after considering the matter further, regulatory agency supervision will be considered a wise thing. However, there are all sorts of different animals there. A church is quite different from a pension fund, and both of them are somewhat different from a fraternal organization, and it is different from a foundation. Whether it is advisable to have a regulatory body to watch over all of these institutions is something that I am not prepared to take a position on right now.

The CHAIRMAN. It is not proposed that you have a regulatory body over churches, certainly. Would you agree that the General Accounting Office may be the best agency to supervise tax exempt foundations?

Secretary DILLON. No.

The CHAIRMAN. It would not be?

Secretary DILLON. The General Accounting Office, no.

Mr. OLSHER. Do you think, Mr. Secretary, that an annual registration fee for tax-exempt foundations would be a form of reducing costs to the government, and thus implement the Presidential directives in the area of cost reduction?

Secretary DILLON. I don't know what particular costs we have in collating and getting together the information on foundations. It might be that some small user charge in that field would be useful and proper. It is something that I am not prepared to make a direct recommendation on at this time.

Mr. OLSHER. Do you think, Mr. Secretary, that a reasonable registration fee should be set for each tax-exempt foundation, which would enable the government—which after all is the people—to recover a small portion of the operating costs involved in conveying special benefits to tax-exempt foundations?

Secretary DILLON. There is currently no fee imposed for the issuance of a new tax-exempt ruling, but I would think that would be perfectly proper, yes.

The CHAIRMAN. Mr. Secretary, you have been very kind and considerate and patient. We appreciate it. We do not want to deprive you of the opportunity of visiting or meeting with the people that you have coming in here to see you tomorrow. We certainly would not want to do anything in that direction. Thank you very much, sir.

Secretary DILLON. Thank you.

The CHAIRMAN. We are adjourned until 10 o'clock tomorrow.

(Whereupon, at 6:30 p.m., July 21, 1964, the subcommittee recessed, to reconvene at 10 a.m., Wednesday, July 22, 1964.)

## TAX-EXEMPT FOUNDATIONS: THEIR IMPACT ON SMALL BUSINESS

WEDNESDAY, JULY 22, 1964

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE No. 1 ON FOUNDATIONS OF  
THE SELECT COMMITTEE TO CONDUCT STUDIES AND  
INVESTIGATIONS OF THE PROBLEMS OF SMALL BUSINESS,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 10 a.m., in room 1301, Longworth House Office Building, Washington, D.C., Hon. Wright Patman (chairman of the subcommittee) presiding.

Present: Representatives Patman and Harvey.

Also present: H. A. Olsher, Director of Foundation Studies; John J. Williams, Minority Counsel; and Eugene Loehl, Assistant Minority Counsel.

The CHAIRMAN. The Committee will please come to order.

This is the second session of the hearings of Subcommittee Number 1 on the subject of the Federal Government's supervision of tax exempt foundations and charitable trusts.

Our study is confined solely to privately controlled foundations, which are escaping taxation and thus creating a greater tax burden for those who do pay taxes.

Hence our study excludes the following types of exempt organizations, among others: religious organizations; hospitals; educational institutions; charitable organizations, which are supported in whole or part by Federal and State governmental units, or primarily by contributions from the general public; fraternal organizations, etc.

The number of tax exempt privately-controlled foundations increases daily. It is the duty of the Congress to know the resultant effects on our economy and to determine what should be done about it. On behalf of the Subcommittee, I should like to welcome today's witnesses, former Commissioner Mortimer M. Caplin and Acting Commissioner Mr. Bertrand M. Harding. Mr. Caplin, will you present for the record the gentlemen accompanying you, please?

Mr. CAPLIN. Mr. Patman, I am here individually, as a private citizen, a practicing attorney in Washington, D.C. Mr. Harding here is the Deputy Commissioner. He has brought with him the Chief Counsel of the Internal Revenue Service, Sheldon Cohen, and the Chairman of the Exempt Organization Council of the Internal Revenue Service, Mitchell Rogovin.

The CHAIRMAN. Fine. Thank you, sir. You may proceed in your own way. I understand you have a statement that you would like to present.

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Mr. CAPLIN. Yes, sir, Mr. Chairman. I have the statement which you requested that I submit.

The CHAIRMAN. That is right. We received it on time, and we appreciate it.

**TESTIMONY OF MORTIMER M. CAPLIN; ACCOMPANIED BY BERT-RAND HARDING, DEPUTY COMMISSIONER, INTERNAL REVENUE SERVICE; SHELDON COHEN, CHIEF COUNSEL, INTERNAL REVENUE SERVICE; AND MITCHELL ROGOVIN, CHAIRMAN OF THE EXEMPT ORGANIZATION COUNCIL OF THE INTERNAL REVENUE SERVICE**

Mr. CAPLIN. In response to the invitation of the Chairman, I am happy to appear as a private citizen before the Subcommittee on Foundations of the Select Committee on Small Business.

At the outset, I will describe steps the Service took during my three and a half years as Commissioner of Internal Revenue to strengthen compliance with the tax law on exempt organizations, including foundations and charitable trusts. While my resignation became effective July 10, 1964, my statement will reflect the course which the Service has charted for the years ahead—a course Acting Commissioner Harding has assured me will be followed. I might point out that my statement here today has Internal Revenue's full concurrence.

What Internal Revenue has tried to accomplish during this period may be summarized as follows:

1. Audit examinations of returns of exempt organizations were increased from an average of 2,000 a year during the 1950's to over 10,000 in the last fiscal year ended June 30, 1964.

2. Efforts were made to assist exempt organizations in complying with the law, and to expand voluntary compliance.

3. Improvements were made in the Service's internal controls and procedures for better administration of the exempt organizations provisions.

4. An affirmative litigation policy was pursued to resolve difficult legal issues and to give authoritative guidance to field personnel in their administration of the law.

5. A new Exempt Organization Council was put into operation—to recommend Service-wide legal positions, to eliminate administrative obstacles, and to give direction to the Service's total effort.

Before describing these items further, I would first like to discuss some of the background of the tax exempt provisions, the large growth of exempt organizations and the dimensions of the task of administering this aspect of tax law.

The Service has many responsibilities in our own country and abroad. It administers what has been called the most complex law ever devised by the mind of man, comprising almost 8,000 sections and levying over 100 separate taxes. It is responsible for enforcing the law and collecting the revenues that finance this government—collections estimated at \$112 billion for this past fiscal year. And it must do this in harmony with the American system of encouraging voluntary compliance and accurate self-assessment.

The American tax system underwent a sharp transition during World War II, shifting from a narrow base tax to a broad-base mass income tax. There were complex excess profits taxes to be administered during both World War II and the Korean War. And, as you recall, the Service itself went through a nationwide reorganization in 1951 and 1952. Concurrently the country was growing in population, and tax returns were mounting in numbers and in complexity.

These developments all played a part in determining the emphasis the Service has been able to place on given tax areas in the decades following 1940. For exempt organizations we also find a special history.

From 1913 to 1942, the Service had the responsibility of enforcing broadly defined exemption provisions without tax return requirements. Once the organization had preliminarily established its right to exemption, and has been placed on the tax collector's rolls, it was free of any further reporting requirement. Despite changes made in 1942, many exempt organizations today are still not required to file annual information returns.

Despite the early absence of returns, the Service strongly opposed the commercial involvements of these organizations right up to the enactment of the Revenue Act of 1950. For the most part, it had been unable to convince the courts that commercial activities were incompatible with an exemption grant.

In 1942, the Treasury had proposed a tax on unrelated business activities of these organizations. But it was not until 1950 that legislation was adopted making some corrections.

The remedial legislation of 1950 was far less than the Service had requested. For example, rather than expressly prohibit certain transactions between a donor and his controlled foundation, as had been in the Treasury proposal, the legislation chose to challenge such transactions only when there were inadequate security, unreasonable rates of interest, substantial diversion of income or corpus, excessive compensation, improper sales prices or improper purchase prices, and the like.

Even after this remedial legislation, the Service continued to suffer a series of judicial defeats during the 1950's when it attempted to enforce its interpretation of the law in the courts.

One other aspect of federal efforts to monitor exempt organizations should be noted. Overall supervision of charitable trusts and foundations is a matter of state law. This is an historical fact. Yet, most states have no agency to which even the existence of these organizations must be reported. This is not the healthiest climate in which to administer a program.

I might add we have made efforts to contact the state organizations; Mr. Rogovin might be able to elaborate on his visits with them.

Exemption of different forms of activity from taxation has been part of our income tax system since its inception. In fact it goes back to the Corporate Tax Law of 1909. Congress, in creating the various categories of exempt organizations, has covered a wide range: civic and social welfare organizations; labor unions; social and recreational clubs; fraternal orders; business leagues; cemetery corporations; pension funds; and, of course, innumerable forms of scientific, educational,



religious, charitable, and literary organizations. Seventeen different categories of income tax exemptions are contained in Code Section 501, with numerous sub-categories scattered throughout.

Congress has made the judgment on the social and economic justifications behind the statutory grant of exemptions. It has also established the broad criteria for qualifying as an exempt organization, as well as the standards for revocation of exemption and taxation of certain types of income. Internal Revenue administers the law in the form passed by Congress; and, here, the absence of precision in various parts of the statute has made its administrative task a difficult one.

Let us look at the magnitude of the administrative job. In terms of numbers alone, the Service passes upon about 12,000 new exemption requests a year, of which about 10 percent are from charitable trusts and foundations. It is also responsible for monitoring exemptions under the statute of 400,000 principal organizations, plus several hundred thousand additional subsidiary organizations.

This is a rapidly expanding field, for there has been an enormous growth of exempt organizations since World War II. To take but one category, in Internal Revenue's 1939 cumulative listing, contributions are said to be deductible for 14,500 organizations. In 1962, this number had grown to 71,850.

Another form of measurement is the increase in the number of information returns required from exempt organizations in all classifications. In 1950 we had slightly over 100,000; in 1962, over a quarter of a million.

High tax rates have given impetus to the growth of tax exempt organizations. In addition, these high rates have also contributed to many of the borderline tax devices and tax schemes one finds in this area. People have sought to utilize the exemption to shift a tax burden—some in strict accordance with legislative intent, others primarily for private advantage.

This large growth in exempt organizations and the proliferation of problems flowing from that growth, had not been anticipated by the framers of the legislation. Nor was the Service geared to cope with it. The inability to balance the needs of this particular program against other competing demands has been recognized in the past.

Congressman Reece's subcommittee, investigating tax-exempt foundations in 1954, recommended that there be an increase in the manpower of the Service "to enable it to more closely watch foundation activities." On the type of foundation examination that is possible, this same subcommittee said "\* \* \* it is obvious that the Internal Revenue Service cannot, except at prohibitive cost, follow the activities of the individual foundation to ascertain whether violations of law exist. \* \* \*" This was also the view in 1957 of an Advisory Group to the Subcommittee on Internal Revenue Taxation of the House Ways and Means Committee, which stated:

"Obviously the personnel handicaps under which the Service must labor have an especial effect in an area such as this. The choice which the field official must make is more than difficult. Faced with limited manpower, and a dwindling core of experienced veterans, it is difficult for him to divert any enforcement personnel from regular audit to try for extended productivity in this area."

These cogent observations reflect understanding of the many factors the Service takes into account in examining returns.

The Service's natural predisposition—which is the usual expectation of its Appropriations Committees both in the House and Senate—is to examine returns that experience teaches will be most in need of correction and also productive of revenue. I do not mean this in a crass sense of going out to wring every last tax dollar out of the millions of returns filed. Rather, it is simply a recognition that Internal Revenue must strive to prevent large amounts of revenue from going uncollected; and it must strive to examine taxpayers most likely to commit errors of substantial revenue impact. These errors are not necessarily deliberate or matters of negligence. Often they arise over differences in interpreting complex provisions, or differences in exercising judgment on given sets of facts.

At the same time, there is the need to focus on tax abuses and other violations of law. They are dangerous not because of revenue loss alone—although that is a factor—but because their continuation shakes confidence in the vitality of our self-assessment tax system, and I might add that over 97 percent of our revenues over the last years has been from self-reporting, self-assessment, and withholding. In recent years, Internal Revenue has had to divert audit resources to a number of these areas: artificial international tax arrangements; the organized crime drive; travel and entertainment abuses; failure to declare dividend and interest income—these are just a few.

Then there is the need for random audits—testing of the accuracy of returns in all categories regardless of the direct revenue impact. This is important to strengthen the self-assessment concept. And the need to employ valuable man-hours in learning and applying new legislation and regulations. We have had a great amount of this in the tax field over the past few years, such as the Revenue Act of 1962, the Revenue Act of 1964, the depreciation guidelines, et cetera.

The competing demands in sound tax administration are many. And with its limited resources, Internal Revenue does as much as it can, allocating manpower in accordance with its best exercise of judgment.

This was the background of the exempt organization audit program.

In my first year as Commissioner, we undertook a shift in our overall audit emphasis. This Service-wide program had as its primary objective the broadening of audit coverage.

In particular, I concluded that greater effort should be made in the exempt organization area. In terms of volume alone, new organizations were coming into existence at the rate of approximately 12,000 a year. Nor were we satisfied that we were devoting enough manpower to the audit of organizations that previously had received their exemption.

To correct this, the Service did two things:

First, it decided to allocate enough audit manpower to the examination of exempt organizations to reach about 10,000 examinations a year.

Secondly, it decided that exempt organization audits should be of the same scope and depth as income tax audits. In other words, examinations should be made in accordance with properly prescribed standards. They should not be hit or miss.

In tax administration it is elementary that the Service just cannot decree a new program by fiat. It has to block out its capabilities, prepare written materials, communicate with its 58 district offices, and often train large numbers of personnel. The Service did this incidentally with the travel and entertainment rules with the depreciation guidelines and with our engineering studies—where it brought manpower from all over the field, held training programs in Washington, sent these instructors back to the 58 districts to train some 14,000 revenue agents. Here, too, it had to lay the groundwork to assure that a proper job was done.

Internal Revenue revised and reissued its Exempt Organization Handbook to make it available to all examining officers. It had to develop tentative tax audit guidelines for exempt organizations to assure that audits were conducted competently and thoroughly. It set up a special two-week training program to give its people the required knowledges and skills.

Instructors have already been trained; and these men will in turn train selected field employees in the techniques of exempt-organizations enforcement work. In addition, special technical field conferences were held with top field personnel to assure their support of the program.

By fiscal year 1963, the program began to bear its first fruit. The Service completed 7,219 examinations representing an average of 3.9 days examination time per return, compared to one day previously. For fiscal year 1964, just ended, it completed 10,262 examinations of exempt organizations.

During the period from February 1963 through May 1964, the Service examined 9,552 exempt organizations, including 1,851 private foundations and charitable trusts. This number represents but a small proportion of those it actually looked at as part of its normal classification process.

I might say, Mr. Chairman, that what happens in a district office is that the Service brings personnel in, experienced personnel, to sit down at large tables, with many, many returns, classified as to, in this case, exempt organizations. They know, for example, they want to examine 10,000 returns nationwide. And they may have an assignment in this particular district of, let's say, one thousand. They must look through perhaps 5,000 or even 10,000 returns to pick out 1,000—those they think seem to merit audit. So you have more than just the physical audit of 1,851 private foundations and charitable trusts during this period. You have an examination, a table examination, of the face of the return and the exhibits, seeing if there are any unusual audit characteristics.

Of these 9,552 examinations, field offices recommended 560 revocations and made 829 tax changes. Many technical errors and a few glaring abuses were found. But on the whole, despite the extremely light audit coverage that had prevailed in the past, the examinations indicated that most exempt organizations were in substantial compliance with the law. There were technical errors, but most seemed to be making an effort to comply.

I might say also that, in this process, the Service either has examined or is now examining all organizations cited by this Subcommittee which had not been audited since July 31, 1962. Of 463 examinations

completed as of June 30 of this year, eight exemptions were revoked and six other cases resulted in additional tax liability but without revocation. I might also add that there are others under continuous audit right now, and the full story is not in on your specified case list.

This audit program has developed information that will enable the Service to improve identification of issues, sharpen investigative techniques, and better classify returns for audit. It is also expected to produce data that will be helpful to Treasury in its legislative program.

Attaining a suitable audit pattern is not the end of Internal Revenue's efforts—neither in the exempt organization nor in any other area. The unique success of the American tax system lies in its self-assessment nature—in the 97 percent of tax revenues that comes in through withholding and through what people voluntarily declare and pay. And it is the primary mission of the Service to do everything it reasonably can to attain the highest level of voluntary compliance. This is true for tax exempt organizations as well as taxpayers in general.

I might say that under the perfect tax system, we would get all our reporting from voluntary compliance, and our direct enforcement efforts would go down to a very small amount. We know that we have a long way to go. But we also know that the American public as a whole does an outstanding job. And from our examination to date, we think that foundations, too, are doing a good job, on the whole.

The Service has an obligation to educate and inform. People cannot comply if they do not know what they are supposed to do or what their continuing obligations are. It is the Service's responsibility, given our kind of tax system, to tell them this. It must encourage compliance and assist organizations in their efforts to comply.

Many exempt organizations simply did not know, or had grown careless about remembering, what was expected of them. Many of the violations encountered were unintentional and purely technical in nature. It was apparent that improved communication was needed in this field.

For those affected, the expanded audit program will serve to educate representatives of exempt organizations on statutory and filing requirements applicable to them. But, albeit necessary, this is a limited, expensive, and time-consuming form of education.

The Service has been discussing many of the problems encountered with both groups of organizations affected by the activities of exempt organizations. People who are feeling the competition of exempt organizations, as well as with exempt organizations themselves. Efforts have also been made to encourage tax exempt organizations to adopt a code of conduct and to engage in voluntary self-policing.

More formally, in the past three and one-half years, the Service has published in the Internal Revenue Bulletin 41 revenue rulings, revenue procedures, and announcements relating to exempt organization matters. Fifty-six more are in review right now, and we expect to have them out in the near future.

Some time before leaving office, I asked the Technical organization to begin work on what could prove to be a most important vehicle for informing the public. This is an exempt organizations booklet simi-

lar to "Your Federal Income Tax" which will set forth comprehensive guidance in complying with the law. The booklet will describe the kinds of organizations which may be granted exemption under the law, the extent of exemption, what they must do to gain exemption, how to file, the kinds of activities that jeopardize an organization's exempt status, and the penalties, including revocation, for non-compliance.

In the course of its expanded activities in the exempt organization area, the Service found that it could make a number of improvements in its internal controls and procedures. The goal was to procure better administration of the law.

I should like to enumerate some of the steps taken:

1. A check for delinquent returns has been performed in all district offices since fiscal year 1962, contributing in large measure to the increase in returns filed by over 50,000 between 1961 and 1963. That applies to all exempt organizations.

2. Chief Counsel's office has set up a procedure to control litigation of cases involving exempt organizations. One of its purposes is to assure that selected issues are litigated in order to gain administrative guidance.

3. Chief Counsel is also applying data processing techniques to provide a legal inventory of exempt organization issues. This will be nationwide in its application. This is part of its information retrieval program.

4. The Service has installed a system for monitoring exempt organization audits to provide meaningful current information on the number and kinds of organizations examined. This, in turn, will assure better analysis and evaluation of results, and help design a better enforcement program.

5. The Service has revised the application for exemption (Form 1023) used by organizations desiring exemption under Section 501(c)(3). That is the general scientific, educational, charitable type of organization. The new application form is accompanied by an extensive instruction folder designed to clarify the kind of information needed.

6. Following the suggestions of the Chairman of this Subcommittee—I think that your contribution here, Mr. Chairman, was great—the Service amended its regulations and revised the annual return (Form 990-A) to provide for fuller public disclosure of information concerning operations of exempt organizations. As part of this, it has provided for public inspection of returns both in the district where the return is filed and in the National Office. Disclosure is highly essential in this field. And I think your analysis here, and your urgings to the Treasury to amend its regulations bore good fruit.

7. To replace the existing manual record-keeping system, The Service is establishing a Master File of exempt organizations on electronic tape which will contain all the data it needs to meet its responsibilities. The Service is taking advantage of the computer system, which it is using on individual returns, and is applying it to the exempt organization field. And it is moving this along more rapidly than it had originally planned.

This is expected to be ready within a year.

Further internal improvements will undoubtedly be needed, but a good start has been made and attention is being given to the problem.

In appraising the Service's efforts over the past few years recognition must be given to the need for an affirmative litigation program.

The legal issues in the exempt organization field are difficult to resolve. Further, the absence of authoritative guidance creates obstacles for personnel in the different field offices. How can you audit properly unless you know what the rules are, what the courts will back up.

To correct this, the Chief Counsel and the Department of Justice have sought judicial answers by pursuing a sustained and affirmative litigation program. Illustrative of this policy is an important case bearing on commercial dealings with an exempt organization, which is now pending in the United States Supreme Court.

I might say that certiorari has been granted in that case, and the United States Supreme Court will hear the case this coming term.

On the subject of litigation, two observations are in order:

First, the full effect of the increased audit activity in the exempt organization area is not yet reflected in current litigation caseloads. Due process is provided taxpayers in the fullest sense—hearings in the field, hearings in the National Office, briefs filed. This is a normal procedure; and with the increased audit activity and recommendations of revocation of exemption, this due process procedure is made fully available to all these organizations. This is again part of our tax system.

The fact that this does not reflect the audit activity is due to the time lapse between audit and litigation. Nevertheless, a survey this spring of docketed exempt organization cases shows some 161 cases pending before the Tax Court of the United States and approximately 85 cases pending in the United States District Courts and Courts of Appeals. They directly or indirectly involve issues relating to the exemption provisions of the Code, and embrace charitable as well as various other classes of exempt organizations.

Second, the Service's litigation efforts have made one fact apparent—the need for effective litigation control. Selecting your issues, the important ones from an administrative standpoint, and moving those cases before the courts to get judicial guidance for taxpayers as well as for the field. This is essential to bring about those judicial determinations required for nationwide administration of the law.

I cannot overemphasize the importance of these various legal efforts.

The administrator would be greatly assisted by a more detailed statute on exempt organizations to provide better guidance. Within the limitation of a broad statute, the Service has struggled over many difficult interpretative issues. At times answers have been delayed and uncertainty has continued. There are problems awaiting resolution and decision, and their existence has impeded the Service's audit program and hampered its taking clear-cut positions in litigation.

What was found necessary within the Service was a high-level body to help remove these impediments, and to develop realistic and workable principles for administering the exempt organization provisions. To this end, in the spring of 1963, I set up an Exempt Organization Council headed by a member of my own staff, Mr. Mitchell

Rogovin, with representatives from Chief Counsel, Technical, and Compliance—the three key functions involved in the exempt organization area.

The Council's mission is to review and recommend an overhaul of procedural and substantive issues. They are coordinating all existing projects, identifying other problems, making decisions, and recommending policy decisions to the Commissioner. This is a high priority matter and the Council is moving along with a sense of urgency.

The Council presently has many important projects underway to ease administration and compliance problems, and to establish legal positions applicable to all aspects of the Service. Among these are: determining the extent to which charitable organizations can engage in business activity without jeopardy to exemption; determining the limitation on commercial activity for other classes of exempt organizations; and developing more workable rules for the application of the tax on "unrelated business income." I can add accumulation issues, et cetera, et cetera. An intensive study is also underway on whether the activities of some organizations are so politically or ideologically oriented as to jeopardize their exemption status, and this too is an extremely difficult area of the exempt organization law.

On legislation, as Secretary Dillon has already advised you, studies are now underway in the Department looking to the development of legislative proposals. Internal Revenue has been cooperating closely in this project, and is continuing to furnish its administrative records and findings, as well as its recommendations for possible remedial legislation.

When the Secretary completes his studies and a legislative program is presented, it is my hope the Congress will seriously consider the proposals, including those designed to remove difficulties in administration.

In conclusion, Mr. Chairman, I believe the Service's three-year record shows that it has moved steadily forward in the exempt organization area. I cannot help but feel that the combined efforts of (1) its expanded audit program; (2) its increased effort to inform and assist taxpayers; (3) its improvements in internal procedures and controls; (4) its affirmative litigation efforts; and (5) the operations of its Exempt Organization Council, will contribute greatly to lasting, improved compliance on the part of exempt organizations.

The Service is seeking to build a firm foundation to insure continued long-range progress, and it is not complacent. The road to maximum compliance in this area is a long one, but it is determined to continue its efforts until the goal has been reached.

In closing I would like to state that this country is fortunate in having the group of able, top executives now administering the affairs of Internal Revenue. They are career employees of long experience. They are honest, devoted and work long hours including weekends in trying to serve the best interests of the nation. I have never served with a better group of people, I have gotten great satisfaction from working with them, and I am proud of this association.

In using the funds appropriated to the Service, these officials are seeking to get the best dollar's worth for the American people. They are striving for the highest productivity and best utilization of the resources assigned to them. Differences may arise over their exercise of

judgment; but in my many contacts with them over three and a half years, I always felt confident that their decisions were made in good faith, and with great care and concern for the Congressional intent reflected in a statute as well as the public weal.

I have every confidence that these attitudes and practices will continue, and that they will be applied in carrying out the various programs and policies discussed today.

I appreciate your giving me the opportunity to appear before you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Caplin. We appreciate your very informative and revealing statement. It will be very helpful to the Committee.

The federal courts have repeatedly declared that regulations issued by the Secretary of the Treasury, when fairly within the scope of his jurisdiction, have the force of law. Is that correct?

Mr. CAPLIN. This is a statement that is used, Mr. Chairman, although time and again the courts will overrule regulations, in the lower courts as well as in the Supreme Court.

The CHAIRMAN. Has there been considerable improvement in foundation reporting in their 1962 and 1963 tax returns—such as in furnishing the schedules required on sale of assets, contributions received, contributions paid out, salaries, etc.?

Mr. CAPLIN. Well, as you know, Mr. Chairman, the return was modified in 1962, in part, and in 1963. This resulted in a fuller disclosure on certain important items. In addition, the attention that both this Committee focused on the various activities, and our own attention led to a reaction on the part of the public. Our district directors feel that we are getting a better return filed today.

Again, they are not perfect. There are many technical errors still committed. But they are better returns.

The CHAIRMAN. With respect to sale or exchange of each asset, Treasury regulations require that foundations attach a schedule to their tax returns showing the following information: (a) date acquired, manner of acquisition, date sold, and to whom sold; (b) gross sales price; (c) cost, other basis, or value at time of acquisition if donated; (d) expense of sale and cost of improvement subsequent to acquisition; (e) depreciation since acquisition; and (f) gain or loss. Is that correct?

Mr. CAPLIN. Yes, that data is called for by the instructions for filing Form 990-A, under authority of the statute and Treasury regulations.

The CHAIRMAN. We have heard a great deal from government officials and foundation executives who insist that it is not the large foundations who abuse their tax exemption privileges. It is the small ones, they say.

I have here the 1962 and 1963 tax returns of the Carnegie Corporation of New York, one of the Nation's largest foundations, with assets of \$250 million. I would like to have you inspect the capital gains schedules which show gains of over \$6.5 million in 1962 and over \$3.5 million in 1963, and then tell us whether the Foundation had reported all the information required by Treasury regulations.

Mr. CAPLIN. There are a number of exhibits here, Mr. Chairman. I will have to take time to go through this. I will be glad to supply the answer for you on that.



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The CHAIRMAN. All right. Suppose you do that—and with special reference to these points.

Mr. CAPLIN. Very good, sir.

The CHAIRMAN. You may go ahead and inspect it, then.

Mr. CAPLIN. Yes, sir. Mr. Chairman, of course, we will supply this answer to you. Also the returns have not been audited, and it is difficult to tell whether or not various requirements of the provision are applicable to each of these transactions. But again, we will give you a written reply to this.

The CHAIRMAN. All right. Is it correct that the following information has not been filed on those Carnegie schedules: date acquired, manner of acquisition, expense of sale, gain or loss on each asset.

Mr. CAPLIN. We will comment on that, sir, with our written reply.

The CHAIRMAN. Yes, sir. Is there a special statute which exempts the Carnegie Corporation from complying with Federal law?

Mr. CAPLIN. Obviously not, sir.

The CHAIRMAN. Mr. Olsher will ask questions.

Mr. OLSHER. Mr. Caplin, the Chairman was referring to the capital gains schedule on the sale of assets. There are only a few pages of them.

Mr. CAPLIN. Hasn't the Chairman indicated the discrepancies involved?

Mr. OLSHER. I think he raised the question as to whether there were such discrepancies.

Mr. CAPLIN. Well, I could read what is on the schedule, Mr. Olsher. I would prefer doing this in writing as the Chairman suggested.

The CHAIRMAN. That will be all right. That is a reasonable request. You can submit it.

(Following is the information received from the IRS under date of August 4, 1964:)

We have examined the capital gains schedules submitted by the Carnegie Corporation for 1962 and 1963 and find that complete information on gain or loss from sale of assets required by our instructions was not furnished.

As I previously stated, these returns for 1962 and 1963 have not been audited to date. I find, however, that during a current audit of the foundation's return for 1961, the agent called this deficiency to their attention and advised them that the detailed schedule on capital transactions must be submitted in the future.

Formal instructions have been issued to our field offices on the necessity of securing complete returns from exempt organizations and we shall continue to emphasize the importance of this in future communications.

The CHAIRMAN. It seems to me, Mr. Caplin, that the small foundations have no monopoly on violation of Treasury regulations. For example, beginning with the 1954 tax returns, the Treasury has required that foundations attach a schedule for compensation of officers, directors, trustees, etc.—showing name, position, salary, and time devoted to position. Yet the Ford Foundation failed to comply fully with this Treasury regulation during fiscal years 1954 through 1961. Are you familiar with that?

Mr. CAPLIN. This you have reported on, sir.

The CHAIRMAN. In your view, should the entire content of foundations' tax returns be open to public inspection?

Mr. CAPLIN. I think that there should be the greatest of disclosure by foundations to the public. Exemption is an extremely preferred

status under our tax system. And I would encourage disclosure to the greatest extent.

Today, so far as the returns are concerned, the principal provision which is not disclosed to the public is the name of the contributors to the foundation.

Congress would have to make the judgment here in weighing whether this disclosure of information will in any way violate the right of privacy of the individual as opposed to the needs of the proper policing of foundations and the proper disclosure to the public.

My own tendency would be in favor of greater and greater disclosure, comparable to companies which report to the SEC.

The CHAIRMAN. By letter of January 31, 1964, you advised me as follows:

Regulations 301.6104-2 (T.D. 6645, 4-1-1963), make provision, for the first time, for public inspection at the National Office of Part 2 of Form 990-A, and Form 1041-A. Such inspection, however, is limited to returns of that type which were filed for years ending on or after December 31, 1962. Information furnished on the public portion of such returns for prior years is available for inspection only in the office of the district director with whom the Form 990-A or 1041-A was required to be filed.

Since neither your letter of January 31, 1964 or your letter of February 18, 1964 was responsive to my inquiry, I once again advised you that you were evading my question as to whether "the public portions of all Forms 990-A and 1041-A filed throughout the country for the year 1962 are currently available for public inspection in the Washington, D.C., National Office."

By letter of February 26, 1964, you wrote me as follows:

Copies of the public portions of approximately 39,000 Forms 990-A and 1041-A filed throughout the country for the calendar year 1962 are presently available for public inspection here in the National Office. While this would represent substantially all of the returns filed, we are still receiving them from the various district offices. (As you will note in our February 18, 1964 letter, the figure of 49,000 represented the total of both calendar and fiscal year returns.)

The notice applying to this appears in the Federal Register of April 2, 1963. Such notice is dated March 28, 1963. This means, does it not, that only foundation tax returns that were filed after March 28, 1963 will be open to public inspection at the National Office?

Mr. CAPLIN. As I understand the background to that, Mr. Chairman, there was a new procedure instituted, and we were having difficulties in getting the district offices to pull out these returns from their files and to transmit to us as rapidly as we hoped for originally. 1963 returns would not be available yet for complete public inspection, because the normal date would be May 15, 1964, for a filing, and some of them are fiscal years.

The CHAIRMAN. The main point here is, does it mean that only foundation tax returns that were filed after March 28, 1963 will be open to public inspection at the National Office?

Mr. CAPLIN. Previously these returns were filed in the district only. And this is one of the areas that you had identified, with both me and the Secretary, and this is one of the procedures that we changed.

The amended regulations provide that all returns filed for taxable years ending on or after December 31, 1962 are open to inspection here.

Thus, returns of organizations filing for fiscal years ending prior to December 31, 1962, will not be available for inspection in the National Office.

I think in the past the nationwide assembly of foundation returns had been done by some charitable organization which tried to collect this data by actually traveling all over the country.

The CHAIRMAN. In other words, 1962 tax returns of foundations that operate on a fiscal year basis, such as year ending September 30, 1962, will not be open to public inspection at the National Office since they were filed prior to March 28, 1963. For example, the Ford Foundation operates on a fiscal year ending September 30, 1962, so the deadline for its filing would be February 28, 1963. Hence its 1962 tax returns would not be open to public inspection in the National Office; is that correct, Mr. Caplin?

Mr. CAPLIN. Yes, sir, Mr. Chairman. The prior procedure was to maintain these files in the various district offices, and as far as we know right now they are on file there today.

The CHAIRMAN. And would be subject to inspection.

Mr. CAPLIN. And would be subject to public inspection.

The CHAIRMAN. How did the Internal Revenue Service happen to exclude such 1962 fiscal year tax returns? I believe your answer covers that.

Mr. CAPLIN. Yes, sir.

The CHAIRMAN. Such tax returns are also open to public inspection at the district office. Is that correct?

Mr. CAPLIN. That is right.

The CHAIRMAN. In your view, should the names and addresses of donors be open to public inspection? I believe you answered that a while ago.

Mr. CAPLIN. Yes, sir. Incidentally, Mr. Chairman, I might add that on that point, Internal Revenue's attorneys have advised it that the statute today prevents disclosure of the names and addresses of the individual contributors.

The CHAIRMAN. And it would take a law—

Mr. CAPLIN. Modification of the law to change that.

The CHAIRMAN. Do I understand correctly that, based on Treasury's present interpretation of the law, the names and addresses of donors are not open to public inspection?

Mr. CAPLIN. That is right.

The CHAIRMAN. Are you familiar with a tax-exempt organization called the Foundation Library Center of New York City—which I understand is a sort of trade association for the foundation industry? Are you acquainted with it?

Mr. CAPLIN. I am acquainted with the organization. As I understand it, it is a tax-exempt organization formed by the Russell Sage Foundation. It has the purpose of collecting information about tax-exempt organizations—and actually maintains a file of foundations, as it describes foundations, in various of its offices. It also has as one of its purposes the effort to improve reporting procedures of foundations, which is of great interest to you and the Service.

The CHAIRMAN. I will ask Mr. Olsher to continue now.

Mr. OLSHER. The tax-exempt Foundation Library Center of New York City, which was incorporated in 1956 as an educational institution, bills itself as the factfinding statistical organization on founda-

tions. According to the Foundation Directory of 1960, "It [Foundation Library Center] is an independent agency under its own board of trustees, men knowledgeable about foundations but representing the public interest. With an initial grant from the Carnegie Corporation of New York, it is charged with the task of gathering comprehensive information about foundations, stimulating adequate reporting where such does not exist, and making its collections freely and generally available."

Mr. Caplin, does this organization, which bills itself as an educational institution, have a faculty?

Mr. CAPLIN. No, sir. That is not required under the statutory and regulatory definition of education.

Mr. OLSHIE. Who are they educating? Do you know?

Mr. CAPLIN. Well, so far as I understand, they are concerned with educating the public at large and in addition the foundations themselves, as a nationwide body.

Mr. OLSHIE. Do you know whether they offer any educational courses?

Mr. CAPLIN. I have no idea. I do not have any close familiarity. They have had contacts with our office, and we have met some of the top officials. Very early in the new Administration they called upon us to find out whether they could do a better job of getting copies of returns and making them available to the public at large.

Mr. OLSHIE. Do they have any students, to your knowledge?

Mr. CAPLIN. Not that I know, sir.

Mr. OLSHIE. As you know, the Alfred P. Sloan Foundation granted \$200,000 to the Foundation Library Center for the express purpose of opening and operating an office in Washington, D.C.

On November 20, 1963, we queried you with respect to whether the Foundation Library Center sought the approval of the Internal Revenue Service with regard to the opening of its Washington office. By letter of January 3, 1964, you advised us as follows:

The Foundation Library Center did not seek our approval to open its office in Washington. However, the director of the Center did consult with us prior to its opening relative to necessary arrangements for obtaining copies of Forms 990-A and 1041-A filed by foundations. He requested that we help facilitate efforts to obtain copies of the foundation returns in view of the large numbers involved. The Center plans to maintain these copies in their Washington, New York, and regional libraries. We arranged for the Center to photocopy these with equipment installed in our building, on an appropriate fee basis. We welcomed this arrangement because of the opportunity it presented for additional locations where these returns would be available for public inspection.

On January 14, 1964, we asked you to furnish the following additional information regarding the Foundation Library Center's photocopying foundation tax returns at the IRS:

1. Number of such information returns to be photocopied.
2. (a) Number of foundations whose returns will be photocopied, and (b) years to be photocopied.
3. Charge per page or other fee basis.
4. Is the job being done with Treasury personnel or with outside personnel?
5. Type of equipment being used—i.e., Xerox, photostat, etc.
6. Is the photocopying being done with Treasury equipment or with outside equipment? If outside equipment is being used, please advise as to (a) name and address of the person or orga-

nization paying for the rental or purchase of such equipment, and  
(b) date on which the equipment was installed.

By letter of January 23, 1964, you responded as follows:

1. The Library Center estimates that it will photocopy approximately 15,000 information returns per year.

2. (a) The returns will represent some 15,000 foundations.

(b) Photocopying will continue indefinitely, covering the public record portion of returns received from these foundations for years ending December 31, 1962 and thereafter.

3. The Library Center is reimbursing Internal Revenue for incidental costs at the rate of \$.02 per each reproduction of each page. (This is separate and apart from the costs incurred and paid by the Center to other payees in connection with items 4-6.)

4. The photocopy job is being done by an individual hired and paid by the Library Center.

5. A Xerox machine is being used.

6. The photocopy equipment has been obtained on a rental basis by the Library Center.

(a) Rental payments are made by:

The Foundation Library Center  
444 Madison Avenue  
New York 22, New York

(b) The reproduction equipment was put into operation on October 22, 1963.

By letter of February 20, 1964, we queried you as to whether the Foundation Library Center furnished the Internal Revenue Service a list of the 15,000 foundations whose tax returns they wished to photograph. On February 26th, you informed us that the Foundation Library Center did not furnish such a list.

Now, let us make a little comparison. You had previously advised us that the Internal Revenue Service charges the public 50 cents per page for photocopies of the public portions of foundation tax returns.

To sum it up, you are charging 50 cents per page to the public, which supports the tax exempt foundations by way of tax subsidies, but the approximate cost to the Foundation Library Center is 10 to 11 cents per page.

The Foundation Library Center's cost per page is based on figures submitted to us by that organization, which indicate that its total cost for this operation was about \$6,500 for photocopying 61,758 pages during the period of October 22, 1963 through April 1964.

How do you justify the 50 cents per page charged to the public as against the 10 to 11 cents per page charged to the Foundation Library Center?

Mr. CAPLIN. The cost involved in the Foundation Library Center arrangement was very carefully projected by our financial people within the Service.

The work of the Center would relieve Internal Revenue of having to use its equipment, having to use personnel to man the machine, having to use certain personnel on handling of the documents—and maybe handling correspondence that comes in. People often write in that they would like to have certain documents; we have to write a reply letter.

It was a good faith projection of the cost to the government. We felt the two cents was fair for this limited job.

On the other hand, when you take into mind the total job, involving correspondence in many cases, involving the procuring of individual returns, the Xeroxing, the handling—our people felt that 50 cents was a fair price on the average.

Mr. OLSHER. Yes, but you still have 50 cents to the public.

Mr. CAPLIN. I said so, sir. When it is entirely handled by the Internal Revenue Service, taking into account all of the manpower involved in this particular process.

Now, I do not have all the cost figures at hand. I am sure they could be gone over with you by the people who projected them. But all I could say is that, as I said in my original statement, that I am satisfied, from my experience, that this was a good faith judgment made on an examination of the facts—and taking into account the overall cost.

Now, you recognize how time-consuming it is to write correspondence to people sending requests in—the overall handling.

Mr. OLSHER. Mr. Caplin, I visited that project to inspect its operation, along with Mr. Harding. And Mr. Keller informed me that he had three people assigned to that project who did nothing but prepare it for the Foundation Library Center, in terms of submitting returns to a department which is working with the Foundation Library Center. So the Internal Revenue Service does have people assigned to that job.

Mr. CAPLIN. We have people assigned to taking care of this particular phase of the job, and this is where the two cents cost is projected.

Now, they could have written in to us, and we would have to reply to them item by item, and that would be it. They would pay more money for that, if they had done it on that basis. We would have had more work.

Mr. OLSHER. You did state that contributions received are not open to public inspection, is that correct?

Mr. CAPLIN. That is right. That is the general rule.

Mr. OLSHER. In inspecting the project with Mr. Harding, I looked at some of the tax returns that had been turned over to the woman who was handling the project for the Library Center, and in leafing through them, I discovered a tax return from the Stephens Foundation, of Nashville, Tennessee, which carried on it—and it had already been photographed—the amount of contributions that had been received by the Foundation.

Mr. CAPLIN. Yes, I am familiar with that. This was actually a statement of the amount of contributions—you are correct, sir.

Mr. OLSHER. This is supposed to be forbidden territory, is it not?

Mr. CAPLIN. Well, the amount of contribution is not forbidden.

Mr. OLSHER. I am talking about the list of donors.

Mr. CAPLIN. The names of two donors were also included—the people who controlled the Foundation had listed their names. This was the one instance, so far as we know, in this roughly 15,000, that occurred. We investigated as to why it had occurred. On our investigation, we found that the Foundation had not used the proper form. It had used an old form. And to give the additional information required under the new year, with the greater disclosure, instead of

making additional pages on the new form, it filed copies of the first two pages containing the two individual contributions. Now, that is the best we can determine under the facts. We checked with the accounting firm that prepared the return. They stated it was their intent to make the donors' names part of the public inspection portion of the return.

Mr. OLSHER. Mr. Caplin, I was also informed that Mr. Keller's department is cutting out portions now which show names and addresses of donors. Is that correct?

Mr. CAPLIN. I am not familiar with that.

Mr. OLSHER. I was also informed that they were throwing them away, those portions of the tax returns. Now, what happens when the Internal Revenue Service, the Washington Office, wants to refer to any one of those tax returns with respect to contributions received. Where are they going to find those schedules that were thrown away?

Mr. CAPLIN. Well, the obvious place would be in the district office.

Mr. OLSHER. Doesn't that involve a great deal of delay?

Mr. CAPLIN. It could. But we normally would not have need in the National Office for this particular item. As you know, the Internal Revenue Service is decentralized. The 52 district offices today handle the operational phase. Actually if we were in urgent need of the information, we could do it very quickly by teletype, or using the Government lines.

The CHAIRMAN. Mr. Harding, would you like to comment on that?

Mr. HARDING. Yes. I think the main point to be made to Mr. Olsher on that item is that the audit of these returns is at the district office level. The only reason we have them in Washington is for public inspection purposes. So there is no loss of information when we throw away some portion of that section in Washington.

The CHAIRMAN. I shall ask Mr. Olsher to continue.

Mr. OLSHER. Our records disclose that the IRS has levied \$641,562.000 (\$410,280.70 tax and \$231,281.30 interest) in taxes on the Lansing Foundation (assets \$779,546, December 31, 1960), New York City (one of three foundations operated by David G. Baird, Wall Street broker and corporate director). The taxes were assessed for the years 1952 and 1953, and, among other conditions imposed by the IRS, the Foundation is required to divest itself of its entire net assets to bona fide tax exempt charitable organizations on or before December 31, 1965.

The tax assessment was based upon Lansing's (1) profit-making transactions and other financial ventures, and (2) unreasonable accumulation of income (unspent income).

Two other Baird Foundations—Winfield Baird Foundation (assets \$17.4 million, December 31, 1960), and David, Josephine & Winfield Baird Foundation (assets \$10.2 million, December 31, 1960)—went unassessed despite the fact that their financial transactions were similar to Lansing's and, in the case of the Winfield Baird Foundation, considerably larger. In fact, in 1959, the District Director of the Internal Revenue Service had recommended revocation of the tax exemption of the Winfield Baird Foundation and the David, Josephine & Winfield Baird Foundation for a variety of reasons, includ-

ing their operations as securities dealers. These two foundations are, however, among other conditions imposed by the IRS, required to divest themselves of their entire net assets to bona fide tax exempt charitable organizations on or before December 31, 1965.

Here is a chronological account of the IRS-Baird Foundations tax matter:

#### IRS-LANSING FOUNDATION

By letter dated August 6, 1954—The IRS revoked the tax exemption of the Lansing Foundation for the years beginning 1951. The revocation was based upon unreasonable accumulation of income and "without taking any of your other financial transactions or investments into consideration."

The Lansing Foundation filed a protest (date unknown).

By letter dated September 5, 1957—The IRS affirmed the revocation based on unreasonable accumulation of income and further concluded, on the basis of Lansing's profit-making transactions and other financial ventures, that its operations were not exclusively charitable as required by the Statute.

By letter dated October 22, 1962—The IRS reconsidered and concluded that Lansing was exempt from 1951, 1954 and subsequent years, but not for 1952 and 1953. The ruling was issued with the understanding that a closing agreement would be executed containing certain conditions outlined in the letter.

By letter dated January 18, 1963—The IRS sent the Lansing Foundation a copy of the signed agreement, approved by the Commissioner of Internal Revenue on January 15, 1963.

#### IRS-DAVID, JOSEPHINE & WINFIELD BAIRD FOUNDATION

By letter dated March 4, 1959—The District Director of the Internal Revenue Service, New York City, advised that David, Josephine and Winfield Baird Foundation that he would recommend to the Commissioner of Internal Revenue, Washington, D.C., that the Foundation's tax exemption be revoked for the years 1951 through 1959. A final determination, however, would be within the jurisdiction of the Commissioner. The basis of the revocation includes 1) the Foundation's operations as a securities dealer, 2) unreasonable accumulation of income, 3) jeopardizing assets by heavy borrowing, 4) registration of securities in the names of nominees which permits co-mingling of funds and 5) speculative investments.

The David, Josephine and Winfield Baird Foundation filed a protest on September 25, 1959.

By letter dated October 22, 1962—The Commissioner of Internal Revenue, Washington, D.C., overrode the recommendations of the District Director and concluded that the Foundation was exempt for the years 1951 through 1959. The ruling was issued with the understanding that a closing agreement would be executed containing certain conditions outlined in the letter.

By letter dated January 18, 1963—The Internal Revenue Service sent the Foundation a signed copy of the agreement, approved by the Commissioner of Internal Revenue on January 15, 1963.



IRS-WINFIELD BAIRD FOUNDATION

By letter dated May 13, 1959—The District Director of the Internal Revenue Service, New York City, advised the Winfield Baird Foundation that he would recommend to the Commissioner of Internal Revenue, Washington, D.C., that the Foundation's tax exemption be revoked for the years 1951 through 1959. A final determination, however, would be within the jurisdiction of the Commissioner. The basis of the revocation includes 1) the Foundation's operations as a securities dealer, 2) unreasonable accumulation of income, 3) jeopardizing assets by heavy borrowing, 4) registration of securities in the names of nominees which permits co-mingling of funds and 5) speculative investments.

The Winfield Baird Foundation filed a protest on September 25, 1959.

By letter dated October 22, 1962—The Commissioner of Internal Revenue, Washington, D.C., overrode the recommendations of the District Director and concluded that the Winfield Baird Foundation was exempt for the years 1951 through 1959. The ruling was issued with the understanding that a closing agreement would be executed containing certain conditions outlined in the letter.

By letter dated January 18, 1963—The Internal Revenue Service sent the Winfield Baird Foundation a signed copy of the agreement, approved by the Commissioner of Internal Revenue on January 15, 1963.

TERMS OF IRS-BAIRD FOUNDATIONS AGREEMENTS

The principal terms of the IRS-Baird Foundations agreements are as follows:

1. From the effective date of the restoration of their exempt status until their formal dissolution and complete liquidation, the three foundations would currently distribute all of their net income, including net capital gains, to bona fide tax exempt charitable organizations.
2. On or before December 31, 1965, the three foundations would divest themselves of their entire net assets to bona fide tax exempt charitable organizations.
3. The three foundations agreed that they would not make distributions to so-called private foundations organized by private individuals.
4. The operations of the three foundations which caused the revocation of their tax-exempt status would be discontinued. Their investments would be passive in nature.
5. Waivers of the Statute of Limitations on assessment and collection would be executed by the foundations.
6. The execution of the agreements was conditioned on the execution of separate closing agreements between the IRS and the three Baird Foundations covering the years 1951 through 1959.
7. Lansing Foundation was taxable for the years 1952 and 1953.
8. For the years 1951 through 1959, the David, Josephine & Winfield Baird Foundation would not be liable for any income

tax, excess profit taxes or penalties. The Foundation's exempt status would remain undisturbed for the year 1951 and all periods subsequent thereto.

9. For the years 1951 through 1959, the Winfield Baird Foundation would not be liable for any income tax, excess profits taxes or penalties. The Foundation's exempt status would remain undisturbed for the year 1951 and all periods subsequent thereto. The Foundation would not file any claim for refund for any taxes which it may have paid for the years 1951 through 1959. Apparently, delinquent returns, Forms 990-T, for the years 1951 through 1956 were filed on January 22, 1959, reporting unrelated business income from the rental of property in Allentown, Pennsylvania. The taxes paid on such net income amounted to \$635.39 for the years 1951 through 1956.

10. Lansing's exempt status was restored for the years 1951, 1954 and subsequent years.

11. The agreements would terminate upon the breach of any of their terms or conditions.

12. Notwithstanding anything to the contrary contained in the agreement, Lansing could enter into transactions with the Winfield Baird Foundation, and the David, Josephine, and Winfield Baird Foundation for the purpose of acquiring funds to liquidate its liability for income taxes plus interest without affecting its tax-exempt status.

13. The Winfield Baird Foundation and the David, Josephine & Winfield Baird Foundation agreed that if Lansing failed to pay in full its income tax liability for the years 1952 and 1953 plus interest, they would make payment of any unpaid amounts.

We began probing the Baird Foundations, as well as 500 other foundations, in early 1962. Because of difficulties in obtaining information from Mr. Baird, I issued a subpoena for the records of the Baird Foundation in June 1963. On October 16, 1963, I submitted to the Subcommittee my report on the tax-free commercial activities of the Baird Foundations, describing them as unregulated, tax-free securities dealers, unchartered bankers, and business brokers.

The IRS statement of tax liability to the Lansing Foundation is dated October 18, 1963, two days after release of my report on the Baird Foundations. The Foundation paid the tax liability in the amounts of \$313,915.17 (1952 tax including interest) and \$327,646.83 (1955 tax including interest) on October 24, 1963 and October 25, 1963 respectively.

These facts were discovered by us subsequent to my report of October 16, 1963. Although the Baird Foundations' records were delivered to us under subpoena, the Foundations had withheld their correspondence with the IRS, among other things. When we discovered that the Foundations had withheld such records, I asked that they be delivered immediately. Thus, some records were delivered to us on October 31, 1963.

Upon reviewing the material delivered to us on October 31, 1963, we found references to other records which had not been delivered to us. Hence, by letter of November 13, 1963, I listed the still missing items. Such items were forwarded to us on December 6, 1963.

In my view, the IRS-Baird Foundation tax deal will earn a secure place in the annals of IRS activities which favor tax exempt foundations at the expense of the taxpayers. If the Lansing Foundation owed the Government \$641,562, then the other two Baird Foundations (Winfield Baird Foundation and David, Josephine & Winfield Baird Foundation) owe several times that amount. Their financial transactions were similar to Lansing's and, in the case of the Winfield Baird Foundation, considerably larger. For example, during the period 1951 through 1961, the Lansing Foundation sold securities totaling \$23.2 million, showing capital gains of \$3.8 million. During the same period, the Winfield Baird Foundation sold securities totaling \$89.1 million with capital gains of \$16.5 million; and the David, Josephine & Winfield Baird Foundation sold securities totaling \$14.2 million with capital gains of \$2.1 million.

This is another example of the IRS playing Santa Claus to owners of foundations, to the detriment of the taxpayers who must foot the bill. Obviously, each tax exemption and failure to collect taxes increases the burden of our taxpaying citizens and businesses, including small business.

Contrast the IRS indulgent treatment of foundations with its alleged handling of Mr. George Anthony, a small businessman in Peoria, Illinois, who writes, in part as follows:

I am a small business man \* \* \* Here is what happened. In the first place they took about 3 months of my time, and then after not finding any errors, the agent said I'll have to tax you \$1200 for the time that I put in. Sir, can you imagine that? My lawyer advised me to pay it, and then sue them for it. We did that and won the case, but was out the lawyer's fees, plus the time and harassment. I know of other cases of this type in my city, so there must be thousands throughout the country.

Why did the IRS tax the Lansing Foundation but fail to tax the two larger, more active Baird Foundations—particularly the largest one, the Winfield Baird Foundation?

Mr. CAPLIN. Mr. Chairman, is this question put to me by Mr. Olsher.

The CHAIRMAN. I am putting the question.

Mr. CAPLIN. I assume he just read it for you.

The CHAIRMAN. Yes, he read it for me.

Mr. CAPLIN. Well, Mr. Chairman, I would like to state primarily on this case, number one, the District Office was never overruled; secondly, despite some of the newspaper releases, I should say one newspaper, there was no contact between the Commissioner and Mr. Baird, or any of the principles in the case.

As a matter of fact, the Commissioner did not know the case was even in the office.

In terms of the chronology, if your staff had come to me, I would have been very happy to fill in the chronology of the case. I think there is some suggestion of some impropriety here perhaps.

Now, in fact what happened after September of 1957, which is one of the dates read to me—and I use the Lansing Foundation as the key case, because that was the pivot here—the national office memorandum was forwarded to the district, and the taxpayer made contact protesting the letter. This is the due process procedure I referred to at the outset. There was no automatic revocation without the right to be heard.

In 1958 and 1959, briefs were submitted in the district through the normal decentralization procedure and heard out there.

In March of 1960, the Revenue agents from the district who were examining this particular return came to Washington to meet with the Exempt Organizations Branch for advice on the case, and they talked about the proposal of settling the case on some basis with the taxpayer's representative.

They went back to New York in May of 1960—"they" meaning the district Revenue agents—and had a conference with the foundation and their representatives in May 1960.

On June 6, 1960—and mind you this was in the prior Administration, contrary to the suggestions of that one newspaper article concerning which administration passed upon this—a report was made to the Chief of the Audit Division of the Manhattan District by one of the Revenue agents working on the case, telling of his conference with the taxpayer on May 27, 1960, setting forth the agreement reached which is substantially the same as the one that is in the final report.

On December 1, 1960, the report of the agents to the Chief of the Audit Division was finalized and discussed with the national office officials working in the exempt organization area.

Mind you, by December 1, 1960, the entire dimensions of the case were agreed upon—accepting the taxpayer's proposal. At that point, the rest was just pure routine administration, carrying out the agreement, with the district going back, writing up a full report—I will not go into all the details—careful review in the field, recommendations from the field that the matter be settled.

The matter was forwarded up here, and was reviewed in the national office by career employees in the normal fashion. As the matter was not deemed important enough for me to personally sign, the return letter was signed in my behalf as hundreds of documents are.

This matter had been brought to the attention of the New York Times by someone from your office, as I understand, Mr. Patman. The New York Times looked into this. They came up, they looked at our public files, they were satisfied, they did not print the story.

The other day this matter was publicized in another newspaper with these very unfortunate suggestions.

I am happy to see that the newspaper which did report that on last Friday corrected their story on Monday.

Now, I will not go into the the legal issues, the question of what our lawyers think about them. I will ask perhaps Mr. Rogovin or the Chief Counsel to discuss with you the grounds upon which the staff felt that this result was a right one.

The CHAIRMAN. According to the Wall Street Journal of July 20, 1964, a spokesman for the IRS states that you did not personally approve the IRS-Baird Foundations tax agreement.

MR. CAPLIN. That is correct.

The CHAIRMAN. Yet the closing agreement states that it was approved by the Commissioner on January 15, 1963 and signed by Bertrand M. Harding on the same date. Moreover, the agreement of October 22, 1962, which is identical with the closing agreement of January 15, 1963, was signed by you.

Mr. CAPLIN. It was not, sir.

The CHAIRMAN. It was not signed by you?

Mr. CAPLIN. It was not, sir. My name is signed on hundreds of documents.

The CHAIRMAN. I mean your name was not signed to it?

Mr. CAPLIN. I did not sign it. My name may have appeared as it does on hundreds of documents.

The CHAIRMAN. Was there any indication you did not sign it?

Mr. CAPLIN. I do not know. I did not sign it.

The CHAIRMAN. Do you permit the use of your name that way?

Mr. CAPLIN. Yes, sir.

The CHAIRMAN. You mean you let people sign it without reference to the fact that you did not personally sign it?

Mr. CAPLIN. We have a complete record in the national office. We have between 30,000 and 40,000 applications for rulings that come in. There are certain important ones which may be sent forward for higher review. We have a man assigned in the office, Mr. Edwin Perkins, Assistant to the Commissioner, who has the authority to sign the Commissioner's name, a delegation like in many other agencies throughout government.

The CHAIRMAN. I doubt that that would be comparable to this. This involves lots of money. And this is a case where you were supposed to have signed that.

Mr. CAPLIN. No. I did not have to. This is merely a letter to the taxpayer, Mr. Chairman.

The CHAIRMAN. You did not sign the agreement?

Mr. CAPLIN. I did not sign the agreement.

The CHAIRMAN. You state your name was on that?

Mr. CAPLIN. My name is not on the agreement.

The CHAIRMAN. And the signature that you had in connection with it was your signature, but it was not made by you?

Mr. CAPLIN. It was not my signature. It was my name written on there.

The CHAIRMAN. But by permission?

Mr. CAPLIN. By delegation, which has been part of Internal Revenue procedure for many, many years. And we go back a hundred years.

The CHAIRMAN. Do you take responsibility for the actions of the IRS during your term of office?

Mr. CAPLIN. I do, sir.

The CHAIRMAN. Will you explain why the Lansing Foundation was not billed for the \$641,562 until October 18, 1963? The agreement was approved by you on January 15, 1963.

Mr. CAPLIN. The agreement was forwarded to the District Office for execution and billing. The bill was not sent out promptly. We made an investigation through Internal Revenue's inspection service. Detailed interviews were made of the persons involved in the billing procedure. As far as we can tell from the inspection report, this just was an inadvertent error. A file was placed on a shelf. And the actual mailing of the bill did not go out until this later date.

But I would like to say this, Mr. Chairman: An intensive audit has been in active operation, so far as these organizations are concerned. It is part of the closing agreement procedure to see whether every single period and comma of the closing agreement is lived up to—

which would have included payment. If there is any violation of the closing agreement—and the closing agreement is wide open—it is rescinded and the whole matter is reopened. The statute of limitations has been kept open by agreement.

So while it is true that in terms of timetable, the bill was actually physically sent from the District Office after the date of your report, I am confident that they would have been billed, plus interest always running, at some time.

The CHAIRMAN. I have before me here a letter, a copy of a letter, United States Treasury Department—it is Xeroxed, Thermofaxed, or some duplicating process.

"Internal Revenue Service, Washington 25, D.C., October 22, 1962."

This is addressed to the Lansing Foundation, Inc., 65 Broadway, New York 6, New York.

"Gentlemen"—the first sentence is:

"In our ruling of August 6, 1954 we revoked your exemption from Federal income tax for the year 1951 and subsequent years on the basis that you had unreasonably accumulated income in violation of section 3814 of the 1939 Internal Revenue Code \* \* \* On September 5, 1957, we affirmed that ruling", and so forth.

Now, that page and the next page and the next page, indicate an agreement, an understanding. And this letter is five pages. And it is signed:

"Sincerely yours, Mortimer M. Caplin, Commissioner."

Do you deny signing that letter, Mr. Caplin?

Mr. CAPLIN. Yes, sir. Regardless of the relevance of my signature, I physically did not sign that letter.

The CHAIRMAN. Take a look at it.

Mr. CAPLIN. That is not my signature, Mr. Chairman. I do not see the relevance. But I tell you categorically, it is not my signature.

The CHAIRMAN. But that does—you have seen that letter?

Mr. CAPLIN. Subsequently, yes.

The CHAIRMAN. That sets forth the agreement between Internal Revenue and the three Baird Foundations?

Mr. CAPLIN. It proposes an agreement. The agreement was not executed until a closing agreement was physically signed.

The CHAIRMAN. But that was acted upon?

Mr. CAPLIN. There was a contract; yes, sir.

The CHAIRMAN. It was a contract?

Mr. CAPLIN. No—a second document was the contract. This was a proposal. A second document, a closing agreement on a particular form, constituted the contract.

The CHAIRMAN. It was accepted—it was a proposal by the United States Government we will say, acting through you?

Mr. CAPLIN. That is right.

The CHAIRMAN. Yes, sir. And it was accepted?

Mr. CAPLIN. That is right. And I accept responsibility as Commissioner for that proposal.

The CHAIRMAN. I can understand, Mr. Caplin, how you would permit the use of your name under certain conditions, where it is just routine. But where this involves matters of really millions of dollars, I don't understand why you would permit people to sign your name without indicating it was signed with your permission.

Mr. CAPLIN. Mr. Patman, that is a large sum of money. But I think you must keep in mind that we handle billions of dollars, almost \$113 billion this year. And in terms of the decision as to what is a significant matter which requires the Commissioner's personal attention—with many, many competing obligations during the day—this is something that I have to rely upon for staff determination. This has been a procedure that has been in vogue for many, many years with many, many commissioners in many, many administrations.

I am not saying it is the perfect system. But it is the best we have been able to devise to keep the Commissioner functioning and making himself effective in a 24-hour day.

The CHAIRMAN. Your statement about the \$113 billion does not impress me too much, because there are very few tax assessments like this in the \$113 billion a year.

Mr. CAPLIN. I was just trying to put the \$600,000 closing agreement in context with various cases we have. We have many individual cases involving many more millions of dollars decided upon by a Revenue agent in the field. I think it is important to recognize that we have to delegate enormous authority, when you have 65 million individual income tax returns, and 100 million returns of all varieties being filed—60,000 employees spread out in 900 offices. We have delegations from the Secretary to the Commissioner to Regional Commissioners, to District Directors, to Chiefs of Divisions and to Branch Chiefs.

The CHAIRMAN. We will insert this letter in the record at this point. (The letter referred to by the chairman follows:)

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
*Washington, D.C.*

THE LANSING FOUNDATION, INC.,  
65 Broadway,  
New York, New York.

GENTLEMEN: In our ruling of August 6, 1954, we revoked your exemption from Federal income tax for the year 1951 and subsequent years on the basis that you had unreasonably accumulated income in violation of section 3814 of the 1939 Internal Revenue Code (which corresponds to section 504 of the 1954 Code). On September 5, 1957, we affirmed that ruling and further concluded, on the basis of your profitmaking transactions and other financial ventures, that you were not operated exclusively for exempt purposes contemplated by the statute.

We have reconsidered your status for Federal income tax purposes for the years involved in the light of information submitted in your protests and in conference held in connection therewith. Based upon all the available information, we have concluded that you are exempt from Federal income tax under the provisions of section 501(c)(3) of the Code for the years 1951, 1954 and subsequent years, but you are not exempt for the years 1952 and 1953 and are required to file income tax returns for such years. Information returns, Form 990-A, are required to be filed for all years for which your exemption has been reinstated.

This ruling is issued with the understanding that a closing agreement made under and in pursuance of section 7121 of the Code, and containing, in essence, the following conditions, will be executed:

1. From the effective date of the restoration of your exempt status until your formal dissolution and complete liquidation you will currently distribute all of your net income, inclusive of net capital gains, to organizations organized and operated exclusively for purposes described in section 501(c)(3) of the Internal Revenue Code of 1954 providing that such organizations shall have obtained rulings or determinations from the Internal Revenue Service that they are exempt from tax and satisfactorily establish that such exemption is still in effect.

2. On or before December 31, 1965, you will have completely disposed and divested yourself of your entire net assets to organizations organized and operated exclusively for purposes described in section 501(c)(3) of the Internal Revenue Code of 1954, provided that such organizations shall have obtained rulings or determinations from the Internal Revenue Service that they are exempt from tax and satisfactorily establish that such exemption is still in effect.

3. You will make no distributions to organizations organized by private individuals which confine their activities to the receipt and disbursement of funds for allowed purposes notwithstanding the fact that such organizations qualify within the meanings of paragraph 1 and 2 hereinabove. In determining whether an organization is as above described, its size, activities and degree of control exercised by its organizer or organizers shall be taken into consideration. Should any question arise as to whether an organization is within the prescribed group, you will make no distribution to it without the prior approval of the Internal Revenue Service.

4. The activities and operations which occasioned the loss of your exempt status, as set forth in letters of the Internal Revenue Service dated August 6, 1954 and September 5, 1957, will be discontinued. Your activities and operations will hereafter come within the allowable limitations set forth in section 501(c)(3), 503 and 504 of the Internal Revenue Code of 1954 and the appropriate regulations thereunder. Your investments will be passive in nature, principally for the production of investment income, i.e., dividends, interest, etc.

5. Waivers of the Statute of Limitations on assessment and collection extending the Statute of Limitations with respect to each of the years 1951 through 1959, inclusive, until June 30, 1963, will be executed by you at the request of the Commissioner. Additional extensions of such waivers for periods of not more than one year at a time will be executed by you at the request of the Commissioner but in no event will you be required to extend the Statute of Limitations for any of the years 1951 to 1959, inclusive beyond December 31, 1967.

6. This ruling and the execution of the closing agreement are conditioned on the execution of separate closing agreements between The Winfield Baird Foundation and the David, Josephine and Winfield Baird Foundation, Inc., respectively, with the Commissioner covering the years 1951 through 1959, inclusive. Any breach of the terms or conditions of said closing agreements by any of the parties thereto shall constitute a breach of the terms and conditions of this ruling and the closing agreement.

7. For the calendar years 1952 and 1953, you will be deemed a taxable corporation for Federal income tax purposes.

8. Your exempt status will be restored for the years 1951, 1954 and subsequent years.

9. The agreement shall terminate upon the breach of any of its terms or conditions, and each of the parties thereto shall thereafter be free to pursue his legal rights and remedies as if the agreement had not been executed.

10. The agreement shall inure to and be binding upon you, your legal representatives, successors and assigns.

11. Notwithstanding anything to the contrary contained in this ruling or the agreement, you may enter into transactions with the Winfield Baird Foundation and the David, Josephine and Winfield Baird Foundation, Inc. for the purpose of acquiring funds to liquidate your liability for income taxes plus interest provided by law without affecting your tax exempt status.

We will approve a closing agreement with respect to those issues set forth above. The necessary closing agreement has been prepared in duplicate and is enclosed.

Both the original and duplicate copy of each agreement should be dated and signed as indicated with the corporate name followed by the signature and title of an officer, or officers, authorized by the board of directors to act in the matter, and the corporate seal should be affixed. There should also be attached to the original of each agreement a certified copy of the minutes of the meeting of the board of directors at which a resolution was adopted authorizing the officer, or officers, signing the agreement to act on behalf of the organization in the matter of entering into the closing agreement. The copy of the minutes should be sworn to before a notary public. Upon execution of the closing agreements, they



should be returned immediately to this office for the attention of T:R:EO:6-GAM.

In pursuance of our policy with respect to closing agreements, the agreement contains a stipulation to the effect that any change or modification of applicable statutes will render the agreement ineffective to the extent that it is dependent upon such statutes.

This ruling modifies our rulings dated March 6, 1947, August 6, 1954, and September 5, 1957.

It will be noted that the conditions set forth in the closing agreement enclosed are substantially the same as those contained in the proposed closing agreement executed by you on Form 866. However, where a closing agreement as contemplated here contains issues affecting future years, the appropriate form to be utilized is Form 906 rather than Form 866.

The District Director, Manhattan, New York, is being advised of this action. Sincerely yours,

MORTIMER M. CAPLIN, *Commissioner*.

The CHAIRMAN. Will you explain, Mr. Caplin, why the Lansing Foundation was only assessed taxes for the years 1952 and 1953? The Foundation's exemption was revoked for all years beginning 1951 by ruling of August 16, 1954 and affirmed by ruling of September 5, 1957.

Mr. CAPLIN. Mr. Chairman, as I did not participate in that case, I would like to suggest that the Chief Counsel or Mr. Rogovin address themselves to that.

The CHAIRMAN. That will be satisfactory.

Mr. CAPLIN. But I would like to say this preliminarily. It must be recognized that this was a death sentence. The agreement was a death sentence so far as the Foundation was concerned—the three Foundations were interrelated, they all had to go out of business by 1965 and distribute to bona fide charities. This was not a matter of giving an individual taxpayer anything. They knew that they were, and they are, under intense audit examination to see that they are abiding by every period and comma in the closing agreement, to make sure that these funds are going only to bona fide foundations. That is on the procedural side.

The CHAIRMAN. Your statement bona fide charity—you mean by that that they will not be allowed to contribute to another foundation—I mean privately-controlled foundation?

Mr. CAPLIN. That is right, another private foundation.

The CHAIRMAN. You do not consider that bona fide?

Mr. CAPLIN. Under the agreement.

The CHAIRMAN. Under the agreement?

Mr. CAPLIN. Yes, sir.

The CHAIRMAN. That is not considered bona fide under this agreement—why should it be considered bona fide where Mr. Baird or anybody else would just make contributions each year from one foundation to another, and from that foundation to another foundation?

Mr. CAPLIN. The law permits this.

The CHAIRMAN. Do you not think that law should be changed?

Mr. CAPLIN. I think that ought to be examined very carefully, Mr. Chairman.

The CHAIRMAN. Now I will ask you just one more question. What were the reasons for the reinstatement of the three Baird Foundations tax exemption by ruling of October 22, 1962?

Mr. CAPLIN. This was all part of an overall proposal. They were tightly interrelated. They were family foundations, with the same group of people involved. And all three were disposed as part of a package settlement agreement, with final liquidation fixed for 1965.

The CHAIRMAN. You say you want one of the other gentlemen to make a statement?

Mr. CAPLIN. Yes.

(Following is revised testimony submitted by Mr. Rogovin under date of August 4, 1964.)

Mr. ROGOVIN. Mr. Chairman, the Revenue Act of 1950 brought about new statutory provisions regarding foundations and charities. One specific provision—dealing with the effect an unreasonable accumulation of income has on exempt status—is particularly relevant in the *Lansing* case.

In 1954 the examination of information returns filed by foundations was conducted by the Exempt Organization Branch in the National Office in Washington. At that time an examination was made of the Lansing Foundation return and it appeared on the face of the return that its accumulation of income might have been unreasonable and therefore in violation of the provisions enacted in 1950.

The National Office sent a letter to Lansing requesting information regarding its income accumulation and also certain security transactions for 1953. As a result of this correspondence, the National Office revoked the status of Lansing Foundation beginning with the calendar year 1951. This was in the August 6, 1954 letter Mr. Olsher previously read into the record.

The reason given the Foundation for this action was that there had been an unreasonable accumulation of income for 1951. This appeared at the time to be a satisfactory ground for revocation. The letter also indicated that Lansing's other financial transactions and investments had not been gone into. The Service was, in effect, not passing on those transactions at the time since the income accumulation appeared sufficient to warrant revocation.

After the organization filed a protest to the revocation, a number of conferences were held here in Washington with the Revenue Service. These negotiations ended in 1957 when the Service reaffirmed the prior revocation letter.

By 1957, when the affirmation of revocation had been sent, the examination of information returns had been decentralized. As a consequence, a memorandum was forwarded to the New York district director advising him of the action taken in the Lansing case and also pointing out that a collateral investigation of the two related foundations, Winfield Baird Foundation and David, Josephine and Winfield Baird Foundation, Inc., should be instituted because of overlapping transactions. Audits of these two foundations covering years from 1950 through 1955 were thereupon undertaken by the New York district office.

As a result of the examinations, "30-day letters" proposing revocation of exempt status were sent to both Baird foundations in the spring of 1959. In each case, the same basic reasons for proposed revocation were set forth. In essence, they were: (1) The foundation's funds

were not devoted to exclusively charitable purposes; (2) Its primary purpose was the carrying out of a trade or business for profit; (3) Its assets were jeopardized by the manner in which they were invested; and (4) There had been an unreasonable accumulation of income for the years 1950 through 1957.

After several extensions of time, a "package" protest brief was filed by the two foundations' attorneys. The brief contested certain findings made by the agent and asserted that the foundations were not dealers in securities; that their securities transactions were for the production of income only and that there had been no unreasonable accumulations of income. In the affirmative, they alleged that the foundations were operated exclusively for charitable purposes.

Subsequently, there were negotiations between representatives of the two Baird and the Lansing foundations with the Manhattan district director's office. The field finally concluded that a package settlement should be accepted as being in the best interests of the Government for the following reasons: (1) As to 1950, the accumulations provision was not applicable; and (2) the evidence showed that the Baird foundations were not dealers in securities and it was very doubtful that a finding could be made that a trade or business existed. In the absence of such a finding, gains from sale of capital assets could not be included in determining accumulations. Moreover, it was indicated that distributions to sister foundations or controlled foundations are not necessarily proscribed and thus the Service might not be able to add back those contributions in determining accumulations.

The terms of the settlement are known to you and have already been read into the record. There are some of the reasons why the settlement was made.

In essence, the exempt status of all three foundations was revoked. Because, however, of doubts as to whether the Government would ultimately prevail in revoking the status of all 3 foundations, a settlement, reflecting these doubts, was arrived at. From the Government's point of view, by the end of 1965 all three foundations will disgorge corpus and accumulated income to approved operating charities and go out of existence; some \$600,000 in tax and interest was recovered; and adequate safeguards regarding activities up to the date of final dissolution were obtained.

The Service recognizes that the process of settling cases is not precise. Often litigating hazards and interpretations of the law must be equated into dollar figures. And this often is done during periods in which the law, as shaped by court opinions, is in a state of flux. Thus, in the matter of the Baird and Lansing foundations, the fact that the litigable issues involved were not free from doubt made these cases susceptible of settlement.

The CHAIRMAN. Will you excuse me just a minute?

(Discussion off the record.)

The CHAIRMAN. Back on the record.

I will ask Mr. Olsner to continue.

Mr. OLSHER. Mr. Caplin, out in California there seems to be a rather unusual situation—an entire county dominated by a foundation. Let me tell you about it.

Today, as has been the case for the past 100 years, the present and future well-being of Orange County, California, the nation's fastest

growing urban area, depends upon the decisions made by the men who control The Irvine Foundation, which in turn controls the Irvine Company.

No community, no business enterprise, no government entity in this County's 797.8 square miles lies outside the shadow of the Irvine Foundation influence.

The Irvine Company's vast land holdings reach as far as the eye can see—and far beyond. Sweeping along 13 miles of enormously valuable shoreline of the blue Pacific and sprawling in a broad belt across the center of Orange County for its entire width, the Company's approximate 93,000 acres are considered the most valuable property available for development under single ownership in the world today.

This prime property comprises nearly 20 percent of hustling, bustling Orange County's total land area of 510,920 acres. Today, the County's population exceeds 1,000,000. By 1980, it is estimated that it will top 2,000,000. I understand that the County is growing  $11\frac{1}{2}$  times faster than the national rate, and  $4\frac{1}{2}$  times that for California as a whole.

The Irvine property, according to conservative estimates, has a market value today of \$1 billion. Competent appraisers report an appreciation factor of 2 percent per month for Orange County real property at the present time. Depending upon location and potential use, the Irvine lands range in value from 25 cents to more than \$7 a square foot.

What The Irvine Company does, or decides not to do, will inevitably have tremendous economic impact throughout Southern California, and especially on the future of the more than thirty fast-growing communities which lie within its shadow.

The Irvine Company, its policies, its management, and its day-by-day operations have been under the domination and absolute control of The James Irvine Foundation, of San Francisco, since 1947. The Foundation is owner of 459 shares, or 53.7 percent, of the issued and outstanding Irvine stock.

James Irvine, principal stockholder of the Company he incorporated under the laws of West Virginia in 1894, established The James Irvine Foundation as a California corporation on January 6, 1937. Voting control of The Irvine Company passed to the Foundation's self-perpetuating trustees upon Irvine's death in 1947. Three of the original trustees are alive today.

Since 1957, there has been active and vigorous opposition to the Foundation's stranglehold on the Company in the person of Mrs. Joan Irvine Smith, granddaughter of James Irvine. Mrs. Smith is the Company's second largest stockholder and the only one serving on the Company's board of directors. She owns 180 shares, or 21.1 percent, of the Irvine stock.

In the unremitting struggle Mrs. Smith has been waging for constructive reforms, the following examples of nonfeasance on the part of the Foundation have been alleged:

- Stockholders have been denied adequate dividend returns as a result of Foundation's failure to institute and maintain good corporate management of the Company. Since 1947, the per share dividend yield has been less than 1 percent of the stock's considerably undervalued \$109,000 per share market value.

- Inflexible Foundation opposition to a proposal for identifying and determining possible conflicts of interest among Company officers, directors, and employees in the following areas: investment in supplier companies; investment in customer companies; investment in competing companies; borrowing from or lending to customer or supplier companies; misuse of privileged information; use of company position for personal gain; financial speculation; revealing confidential data to outsiders; acceptance of employment from firms that have a business relationship with the company; acquisition of real estate of interest to the Company.

- Refusal to investigate the activities of a Foundation director and Company officer in connection with transactions in which The Irvine Company had an interest, which, when conducted by her at her own expense, led to the partition of certain real properties held in joint ownership by the director and the Company, and also to his resignation from the Company and the Foundation.

- Adamant rejection of her proposal to analyze Company operations in an effort to improve income and profit by securing answers to the following questions:

What should the "character" of the Company be in order to maximize profits?

What is a reasonable profit goal for the Company?

What action programs are necessary to achieve specific improvement opportunities in (1) policies, (2) planning, (3) staffing, (4) method of marketing land, and (5) internal controls?

How effective has past performance been (1) in investment return, (2) yield as compared to developed goals, (3) comparison with outside experience in land development and agriculture?

- Inflexible adherence to the Foundation's traditional motto, "What goes on inside The Irvine Company is none of the general public's damned business."

- Negligence and failure by the Foundation directors of their fiduciary obligations in connection with certain real property transactions which have deprived the Company of \$605,960.

- Subversion of a resolution adopted by the Board prohibiting, without advance knowledge and approval of the Board, the leasing or conveyance of any Company real property to any officer, director, shareholder, or employee.

- Various attempts to dilute stockholder ownership in the Company by the proposed creation of subsidiary and independent realty development companies.

- Negligence in the transfer and conveyance of 29 acres of real property representing \$500,000 in benefit and value to the Company.

- Many small businessmen find it difficult to do business with The Irvine Company because they are not members of the "inner circle."

- Foundation directors have caused Irvine Company business to flow to firms controlled by them or their friends.

It is contended that in each instance not only have the interests of the Irvine minority stockholders been affected, but the alleged actions have also influenced the economic well-being of the citizens and resi-

dents of California, for whose benefit The James Irvine Foundation was ostensibly established.

By the way, Mr. Caplin, the Irvine Foundation carries its 53-percent ownership of the Irvine Company at \$2, despite the fact that the Foundation's equity in the net assets of the Company was valued at \$11.7 million on March 31, 1964.

Has the Treasury examined the Irvine Foundation as to whether it is fulfilling its responsibilities as a tax-exempt organization?

Mr. CAPLIN. I do not know whether the Treasury is examining or not. Even if these various allegations are true, I do not know if there is any impropriety under the tax law. But I certainly would hope that the District Director in that area would have examined the transactions. If he has not already, I suspect that he will be looking into it sometime in the immediate future.

But I do think that the type of situation you described illustrates the very point that the Chairman of this Committee has made—the growth of some of the foundations, the broad participation of some of the foundations in business activities, the difficulties under existing law in doing anything about it from a tax standpoint.

We also have the question of whether the States should be taking a more active role here, whether the States should not be the proper body for regulating. If the answer is that the federal government is needed, your next question is which agency of the federal government?

Is the Internal Revenue Service the agency to evaluate portfolios and types of investment and the like, or should there be some other agency examining them?

Another point that is suggested by your various disclosures relates to whether or not there ought to be a limitation on the aggregation of assets over the years—whether or not foundations ought to be required to actually expend part of their assets over some periodic basis, aside from distributions of income.

I think the treatment of capital gains, both short term and long term, as outside of the unreasonable accumulation provisions is also involved here. Should these capital gains, particularly the short-term capital gains, not be included under unreasonable accumulations?

On the question of dealings with any insiders—is the present statute broad enough? Should we not really return to the philosophy of the original House bill back in 1950, when you included not only the controlling people in the foundation, the organizer and his family, but also officers and directors; and you imposed flat prohibitions, rather than only in abuse situations, in dealings between the insiders and the foundation?

Or should we not use an SEC standard like section 16(b) of the Exchange Act in terms of any profit, requiring a disgorgement by individuals of any profits growing out of the foundation relationship?

Another question that comes to mind is what the penalty should be in violation. Should we penalize the foundation, when you have insiders taking advantage of the foundation's shell; or should you penalize the individual, put a special tax on the individual himself, whether he is the controlling stockholder or someone else?

This is another question that suggests itself.

A related question is, why not broaden the definition of unrelated business income?

Today we have great difficulty in applying this provision. In broadening that definition, should we not even prohibit certain activity?

Should we prohibit or sharply limit borrowing, for example?

Should we require diversification of holdings?

Should we limit them in the amount of stock in a corporation that they hold and the amount of assets to be invested in a particular stock?

Should we limit their trading and speculation in securities?

These are all very legitimate inquiries, inquiries which you have made, and which I would hope that the proper Committees of Congress will consider.

The CHAIRMAN. I have a couple of more questions.

Mr. OLSHER. By the way, the Irvine Foundation had not been audited by the IRS as of the end of 1963.

Mr. CAPLIN. I think my prior statement stands.

Mr. OLSHER. Have you ever heard of sinking fund debentures being issued on a foundation?

Mr. CAPLIN. I think this is possible, yes.

Mr. OLSHER. Being issued on a foundation? Do you consider this a proper practice for a foundation?

Mr. CAPLIN. You are talking in terms of the foundation itself issuing fund debentures.

Mr. OLSHER. At this point we do not know.

Mr. CAPLIN. Well, it sounds like a rather extraordinary transaction if they did do this. It would certainly raise serious audit questions, and it would be something that a Revenue agent would want to review carefully.

Mr. OLSHER. The facts on it are as follows:

According to Mr. David G. Baird, from December 13, 1962, through May 12, 1964, a total of \$2.8 million of 4 percent sinking fund debentures, due June 30, 1982, were issued on the Baird Foundations—\$2,740,000 of these debentures were donated to a number of charitable organizations.

The Winfield Baird Foundation was the holder of the remaining \$60,000 of debentures, acquired on June 27, 1962, but there is no indication as to whether the debentures were acquired by donation or purchase. On December 28, 1962, the Winfield Baird Foundation sold the debentures to the Winfield Corporation, a firm with which Mr. David G. Baird is associated.

Mr. CAPLIN. I do not know if any violation of present law is involved, but I can assure you that under the closing agreement procedure, these matters will be examined most carefully. In fact, we have conferred with the Revenue agents who are examining these cases, and have tried to give them the benefit of all your factual studies as well as any legal studies we have made here. So I can assure you they will be well equipped in evaluating the facts and in reaching their recommendations on how the matter should be finally disposed of.

Mr. OLSHER. It is unusual.

Mr. CAPLIN. It sounds unusual to me. I can think of a situation where, if they were constructing a hospital building, they might want to raise some money in addition to contributions. Here a debenture might be appropriate, and a subordinated debenture is a

piece of paper they might like to use in getting the support of the community.

So it is difficult to jump to the conclusion that there is an impropriety just because of the issuance of that type of obligation.

(By letter of October 1, 1964, Chairman Patman asked the IRS to submit the following additional information in connection with the transaction involving the issuance of sinking fund debentures on the Baird Foundations:)

- (a) A detailed description of the transaction.
- (b) Does the IRS approve of this transaction?
- (c) Is this transaction in violation of law or Treasury regulations? If the answer is affirmative, please submit details.
- (d) Is this transaction in violation of the IRS-Baird Foundations agreement of November 1962? If the answer is affirmative, please submit details.

(Under date of October 12, 1964, the IRS responded as follows. Also, see Exhibit 12, page 312.)

In light of the procedural rules for dealing with issues raised in the audit of returns, including rights of appeal available to taxpayers in such cases, I am sure you will agree that it would be inappropriate for me, as Acting Commissioner, to prejudge the tax consequences of the various transactions you cite by responding to your questions at this time. Once the Service audit has been concluded and final decisions reached, I shall be glad to respond to the extent the disclosure statutes and good administrative practices permit.

Mr. OLSHIE. Here is another Baird transaction I would like to summarize. This relates to the Baird Foundations-Lansall Company-Lansall Corporation transactions.

On April 21, 1953, the Lansing Foundation purchased from the Lansall Corp., Room 4500, Chrysler Building, New York City, 5,000 shares of Lansall Corp. Class B stock for \$500,000. The Lansing Foundation held the 5,000 shares of Class B stock until 1957 when it was transferred to the David, Josephine & Winfield Baird Foundation. The latter has carried the shares at \$550,000.

On June 1, 1955, the Winfield Baird Foundation purchased from the Alleghany Corp. 5,000 shares of Class A stock of Lansall Corp., as well as \$1 million of 4½ percent debentures, for the sum of \$1,796,225. The Foundation gave Alleghany Corp. a note in the amount of \$1,796,225.

Thus, the stock and debentures, representing 100 percent ownership of Lansall Corp., cost the two Baird Foundations \$2,346,225.

Subsequently, beginning August 31, 1962, the David, Josephine & Winfield Baird Foundation and the Winfield Baird Foundation transferred \$2,819,937.94 of assets to the Lansall Corp.

On December 26, 1962, the Lansall Company, a Delaware corporation was organized with total authorized capital stock of \$200,000. A 50% interest (1,000 shares) was purchased by the Winfield Baird Foundation for \$100,000 and an equal number of shares were purchased by Mr. Joseph A. Patrick, a general partner of Baird & Co. Nine hundred fifty shares of the 1,000 shares purchased by the Winfield Baird Foundation, were transferred to the name of Baird & Company (as nominee) for various charitable organizations.

Under an agreement dated December 31, 1962, the David, Josephine & Winfield Baird Foundation and the Winfield Baird Foundation



allegedly sold to the Lansall Company all of their stock of the Lansall Corp. (assets \$7,289,289.58 at December 31, 1962 and liabilities \$1,397,313.16) plus certain other assets for the sum of \$5,333,615.83 (cost of the assets to the Foundations). The two foundations received cash in the amount of \$615.83 plus subordinated promissory notes in the amount of \$5,333,000, drawing only 4 percent interest, with no interest to be charged until January 1, 1966.

The aggregate principal amount of notes issued by the Lansall Company was \$7,305,000, all maturing on the first day of April 1978 and bearing interest for the same period payable at the same rate and on the same dates.

Thus, the Lansall Company, through this agreement, was able to acquire completely the entire assets of the Lansall Corporation of New York, whose statement of December 31, 1962 showed a total capital and surplus of over \$5,891,976.42, by issuing subordinated promissory notes totalling \$5,333,000, drawing only 4 per cent interest, with no interest at all to be charged for the first two years, plus \$615.83 cash.

The two Baird Foundations put \$5,333,000 into the Lansall Corporation and received therefrom only subordinated promissory notes based on the actual cost of the assets to the Foundations. These notes are subordinated to all senior obligations of the new Lansall Company, which include all obligations which then existed or may exist. These promissory notes are the least protected of any type of corporate debentures. In addition to their subordination, two specific provisions endanger their negotiability.

- a. A provision in the notes which would allow modification of the terms of the subordinated promissory notes by agreement of 66 $\frac{2}{3}$  percent of the holders of said notes would kill the negotiability of the first 33 $\frac{1}{3}$  percent of the notes which could have been negotiated by the Foundations.
- b. The negotiability of said subordinated promissory notes in any blocks of less than 25 percent of the aggregate principal amount of all the notes is almost completely destroyed by Section 12 of the subordinated promissory notes themselves since it would take holders of more than 25 percent to be able to take any legal action on the notes.

The Lansall Company notes in the amount of \$5,333,000 were made payable to 46 charitable organizations. The notes are all dated July 1963, six months after the sale of closing date of February 8, 1963.

To sum it up, after the two Baird Foundations invested \$5,333,000 in the Lansall Corporation, they wound up holding promissory notes, drawing only 4 percent interest, which are subordinated to all other liabilities of the Lansall Company. It makes this investment by the Foundations the most speculative of speculative investments. It would also appear that the Lansall Company of Delaware was set up for the express purpose of acquiring the entire assets of the

Lansall Corporation of New York from the Foundations with no initial capital outlay at all except the \$200,000 capitalization of the Company.

The 46 charities, who received the \$5,333,000 subordinated promissory notes from the Baird Foundations, may or may not receive the face amount of the notes by April 1, 1978, if ever. Nor is there any guarantee that they will receive interest beginning January 1, 1966.

In connection with the Foundation's disposal, under the agreement of December 31, 1962, of their interests in the Lansall Corporation for promissory notes conferring very subordinated and restricted legal rights and consequently of a highly speculative nature, there are for consideration the rulings, dated October 22, 1962, of the Commissioner of Internal Revenue and the closing tax agreements approved by the Commissioner January 15, 1963, which were entered into pursuant to section 7121 of the Internal Revenue Code of 1954. The rulings of October 22, 1962, permitted the tax exempt status of each of the Foundations to remain in effect with the understanding that a closing agreement continuing that status under prescribed conditions would be entered into pursuant to section 7121 of the Code. The David, Josephine and Winfield Baird Foundation signed such an agreement November 15, 1962, and the Winfield Baird Foundation signed a similar agreement on November 16, 1962. Subsequent to such signing but prior to approval by the Commissioner, the Foundations entered into the agreement for the disposal of their Lansall Corporation stock and other interests to the Lansall Company. The latter corporation is a taxpaying corporation.

Among the conditions stated in the rulings and incorporated in the closing agreements is the provision that each of the Foundations (with an exception of \$200,000 required to be paid certain persons by the deed of trust creating the Winfield Baird Foundation) will, on or before December 31, 1965, have "completely disposed and divested itself of its entire net assets to organizations organized and operated exclusively for purposes described in Sec. 501(c)(3) of the Internal Revenue Code of 1954 provided that such organizations shall have obtained rulings or determinations from the Internal Revenue Service that they are exempt from tax and satisfactorily established that such exemption is still in effect." In the absence of a valid explanation, the Foundations' agreement of December 31, 1962, with the Lansall Company appears to involve a disposal of assets at variance with the above-quoted condition and the general tenor of the closing agreements.

Are the closing agreements between the IRS and the Baird Foundations final and conclusive except upon a showing of fraud or misrepresentation of a material fact?

Prior to approval of the IRS-Baird Foundations' closing agreements, did the IRS have knowledge of the Lansall Company-Baird Foundations disposal agreement of December 31, 1962?

Has the statute of limitations expired on tax assessment and collection on the IRS-Baird Foundations agreements?

Is donation of subordinated notes considered charitable giving by the IRS?

In view of the fact that the Baird Foundations invested \$5,333,000 in the Lansall Corporation and, after holding the stock for ten years, sold it to allied persons at no profit, would you place this in the realm of prudent investments?

Based on these facts, would you agree that Mr. David G. Baird retains control and use of the assets transferred to both the Lansall Corp. and the Lansall Company through the 50-percent interest in Lansall Company stock which is in the name of Mr. Joseph Patrick, a general partner of Baird & Co., and through the 2½ percent of the Lansall Company stock still retained by the Winfield Baird Foundation?

It seems to me that here we have a situation where the Baird Foundations have failed to fulfill the obligations of tax-exempt organizations over a period of many years. So, as a reward for such antics, the IRS permits them to donate \$5,333,000 subordinated promissory notes as a method of fulfilling their responsibilities. Do you approve of this?

The CHAIRMAN. Mr. Caplin, you may answer these questions when you examine your transcript.

Yesterday, in asking a number of questions of the Secretary of the Treasury, he suggested that the questions be propounded to you instead since he did not have the information. And we will submit those questions, Mr. Caplin; also additional questions for you, and ask you to answer them when you examine your transcript, please. Will that be satisfactory?

Mr. CAPLIN. Yes, sir. Do you want it to be answered by me, or would you rather have them answered by the Service?

The CHAIRMAN. Well, depending upon whether or not it is something that relates to you, or during your service. If so, we would like for you to answer it, and not Mr. Harding.

Mr. CAPLIN. Yes, sir.

The CHAIRMAN. Now, Mr. Harvey.

Mr. HARVEY. Well, first of all, Mr. Chairman, I want to thank Mr. Caplin for his cooperation. I have been listening to your testimony, Mr. Caplin, with a great deal of interest. I noted particularly your rather pointed suggestions as to what could be done, both by the Internal Revenue Service and Congress, to improve the situation with regard to tax-exempt foundations.

During my service on this Subcommittee one particular point seems to be prevalent among many of the people who are charged with the administration of these tax-exempt organizations, and that is the question of whether the Congress, in realigning its policies concerning these tax-exempt foundations, should permit them to continue in perpetuity, or whether we should set up some guidelines and some possible time limitations during which a foundation would be permitted to exist.

An example that came to my attention was the Ford Foundation, which is the largest. In the past fiscal year they gave away a good deal more than their assets brought in. I asked them whether it was their theory or long-range policy that they would continue to do this and eventually liquidate the assets of the foundation. They said, "no, it was not." That brought to my thinking the question of whether, as a policy, the Congress ought not set some kind of long-range limit for an eventual termination to foundations.

I realize you are no longer in an official position. So, I am simply asking this as a personal question to you, as a very important former executive in the government.

Mr. CAPLIN. Thank you, sir.

I think it fairly obvious that any proposal for a rule of perpetuity so to speak in the foundation field would be extremely controversial.

Many of the foundations perform admirably and are making significant contributions to our society. This has been recognized by Congress in this continuing exemption which dates back to 1909, was restated in the 1913 Revenue Act, and then continued up to the present. But at the same time, we see the abuses that have developed through accumulation. Perhaps another approach would be to require distributions of part of the corpus as it is received over a period of time—maybe 25 years. Require, for example, that there be over a 25-year period a payout, so to speak, of these various capital contributions and the appreciation growing out of them. So that you would always have a movement, a flow of these funds, rather than the great development of this tremendous accumulation of assets and control of parts of the economy.

Mr. HARVEY. Well, in my question I do not want to intimate that any of the foundations that I have mentioned are guilty. But, I have noticed that a great many of them, because of the fact that they are long established, and because of the apparent assumption that they expect to operate in perpetuity, have now assumed an almost dictatorial attitude which has encroached in some instances, I am sure, on the various educational institutions of our nation. That is, they have become the determining factor, in the establishment of policy for some of our tax-supported institutions. The question that occurs to me is: Has not the mere fact that they expect to be operating in perpetuity greatly enhanced their power and, consequently, their impact on society?

Mr. CAPLIN. With some foundations you may find a tendency to try to build up a big capital investment to strengthen the base for ever and ever.

This happens with small endowment funds, I know, in experience with universities. There you will create funds, and rather than to distribute the corpus, the people managing the fund tend to hold on to this corpus. They often want it to increase and get larger and larger, letting only the income go out for the purposes to which the contributors really want to support.

Personally, I think the approach would not be to have a blanket perpetuity provision. But I do think that it would be worthy to explore this idea of a flow over a given period of time of part of the contributions—the actual principal of the foundation—to the exempt purposes.

Mr. HARVEY. I think that is a very satisfactory answer. I appreciate your candor very much. Thank you.

The CHAIRMAN. I appreciate it, too. Thank you very much, Mr. Caplin, Mr. Harding, and the other gentlemen who accompanied Messrs. Caplin and Harding. We appreciate your testimony. It will be very helpful to us and certainly receive consideration.

Thank you.

(Whereupon, at 12:10 p.m., July 22, 1964, the subcommittee recessed, to reconvene Thursday, July 23, at 10 a.m.)

## TAX-EXEMPT FOUNDATIONS: THEIR IMPACT ON SMALL BUSINESS

THURSDAY, JULY 23, 1964

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE NO. 1 ON FOUNDATIONS  
OF THE SELECT COMMITTEE TO CONDUCT STUDIES AND  
INVESTIGATIONS OF THE PROBLEMS OF SMALL BUSINESS,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 10:05 a.m., in room 1301, Longworth House Office Building, Hon. Wright Patman (chairman of the subcommittee) presiding.

Present: Representatives Patman and Harvey.

Also present: H. A. Olsher, Director of Foundation Studies, and John J. Williams, Minority Counsel.

The CHAIRMAN. The committee will please come to order.

We have as our first witness this morning Commissioner Manuel F. Cohen, of the Securities and Exchange Commission.

Mr. Cary is still the Chairman of the Commission, is he not, Mr. Cohen?

Mr. COHEN. Yes, sir.

The CHAIRMAN. And he hasn't resigned yet, but there is some talk about his resignation. Is that correct?

Mr. COHEN. Yes. It is expected that he will retire as Chairman within the near future.

The CHAIRMAN. Within the near future.

Now, we may still want to have him testify—although we are delighted to have you, Mr. Cohen—you are the Acting Chairman, I assume.

Mr. COHEN. Yes, I am the Acting Chairman, Mr. Patman, and President Johnson has honored me by announcing that he intends to designate me as Chairman when Mr. Cary resigns.

The CHAIRMAN. Well, that is fine. That gives us an added reason for having you, of course. At the same time, Mr. Cary has had some experience in the past which we may wish to ask him about, too.

Mr. COHEN. I would like to say that he has asked me to indicate to you and to the members of the subcommittee that he will be available at your pleasure.

The CHAIRMAN. Thank you, sir.

Now, you may identify yourself for the record, and also identify the gentlemen accompanying you, please, and proceed in your own way.

**TESTIMONY OF MANUEL F. COHEN, COMMISSIONER, ACCOMPANIED  
BY PHILIP A. LOOMIS, JR., GENERAL COUNSEL, AND IRVING M.  
POLLACK, ASSOCIATE DIRECTOR, DIVISION OF TRADING AND  
MARKETS, SECURITIES AND EXCHANGE COMMISSION**

Mr. COHEN. Thank you.

On my right is Mr. Philip A. Loomis, Jr., who is our General Counsel, and on my left is Mr. Irving M. Pollack, who is the Associate Director of our Division of Trading and Markets and responsible for the overall enforcement activities of the Commission.

I have a short statement, Mr. Chairman, and with your permission, I would like to read it.

The CHAIRMAN. You may do so, sir.

Mr. COHEN. Thank you.

I am here today at your invitation to testify concerning the relation of the Commission's administration of the Federal securities laws to the Federal Government's supervision of tax-exempt foundations and charitable trusts.

The Federal securities laws were designed to protect investors by imposing certain obligations upon persons and organizations engaged in the securities business and upon certain issuers of publicly traded securities. Insofar as relevant to the matters under discussion here today, those laws contain provisions for the regulation of broker-dealers, for the prevention of fraud in the purchase and sale of securities, and for the prevention of manipulation of the securities markets. They also restrict the extension of credit, require the filing of annual and other periodic reports and require compliance with the Commission's rules in the solicitation of proxies.

In the administration of those statutes our relationship to charitable trusts and tax-exempt foundations is essentially the same as our relationship to other investors in securities. Although we do not regulate any such investors, the statutes which we administer do in certain circumstances impose obligations upon them. These obligations arise primarily under the provisions of the Securities Exchange Act of 1934.

Under Section 14 of the Securities Exchange Act, the Commission has adopted comprehensive rules relating to the solicitation of the proxies of the holders of securities listed on the national securities exchanges. Generally speaking, these rules require disclosure to shareholders of pertinent information concerning nominees for corporate office and other matters of concern to the corporation with regard to which shareholder votes are solicited. In proxy contests for election of directors, participants are required to provide shareholders with certain information, including their interests in securities of the company. These provisions apply to all persons, including charitable trusts, tax-exempt foundations and other institutional investors, that become participants in a proxy contest.

One of the areas which Chairman Patman indicated he wished to explore in connection with my testimony today is the involvement of trusts and foundations in proxy fights for control of companies whose securities are listed on national exchanges. In light of this request we have examined proxy materials filed with the Commission in all proxy contests since January 1, 1963, and have determined that

only 11 trusts or foundations have been mentioned in the proxy material filed since that date. None was a participant in a proxy contest; 10 were mentioned because of the relationship of a participant with the trust, and the other because it owned more than 10 percent of the securities with respect to which the solicitation was conducted and under our proxy rules such owners must be identified and their share holdings set forth. Our records do not reveal whether any of the 11 trusts or foundations is tax exempt. Indeed, we would not normally have any way of obtaining that information, nor would such information appear to be especially relevant to investors whose proxies are solicited.

I should emphasize at this point that our records relate only to solicitations with respect to securities registered on the national securities exchanges and a limited number of other companies. If legislation proposed by the Commission and embodied in H.R. 6793 is enacted, over-the-counter companies in whose securities there is a significant public interest will be subject to rules adopted by the Commission relating to the solicitation of proxies.

Under Section 16 of the Securities Exchange Act holders of more than 10 percent of a class of equity securities registered on a national securities exchange are required to file with the Commission reports of their securities holdings and changes therein. The purposes of these reporting requirements are to deter, through publicity, short-term trading by corporate insiders in the equity securities of the company with which they are affiliated; to make available to the public information necessary to determine whether activities of such persons have created a liability to account to the company for profits from short-swing trading; and to furnish to the investing public some insight as to possible views of such insiders, as indicated by their purchases and sales, concerning the prospects of the company and the market for its securities.

The ownership reports filed with the Commission pursuant to this section include a number of reports by tax-exempt foundations and charitable trusts. The Commission does not maintain, however, any statistics reflecting the holdings or transactions of trusts or foundations as distinct from any other category of 10 percent security holders.

In connection with the recently completed Special Study of the Securities Markets, an investigation was made of the trading practices of institutional investors, including a detailed investigation of 11 large foundations estimated to hold 56 percent of the stock holdings of all foundations as a class. The information obtained from those foundations does not suggest any special problem in the area of reporting of security holdings by such foundations or any short-swing trading by them. On the contrary, the information indicates that the 11 foundations studied did not engage in short-swing trading during the period beginning January 1, 1961. The information does indicate that in most instances acquisitions of securities by these foundations was by way of gift, stock dividend or stock split and that dispositions were generally by way of gift.

One of the areas concerning which we were invited to testify was the involvement of foundations in insider deals. The information I have just mentioned would indicate that these institutions have not engaged



in short-swing transactions on the basis of any inside information. I wish to make it clear, however, that it may be possible for any corporate insider to utilize inside information without incurring any liability under Section 16(b) of the Securities Exchange Act. This could be done, for example, if an insider had information which suggested that the price of a security would probably decline, and sold his holdings before that information was generally known. The information filed with the Commission would not necessarily give an indication of any such activity by a corporate insider.

We were also advised that the Committee wished to explore the involvement of foundations in stock price manipulations and the extent to which foundations engage in speculative activity, margin trading and short sales. The antifraud and antimanipulative provisions of the Securities Exchange Act apply uniformly to all persons purchasing or selling securities by jurisdictional means, including tax-exempt foundations and charitable trusts. The Commission does not maintain statistics for such institutions as a separate group. In the ordinary course of the Commission's market surveillance, indications of possible manipulations of stock prices are reviewed and, where such action is deemed appropriate, investigated more thoroughly. This is done without regard to the class of investors that may be involved.

The Special Study's investigation of the behavior of institutional investors included the detailed information from 11 large foundations I previously mentioned. That information does not suggest any special problems in this area. Indeed, the information developed indicated that foundations exhibited turn-over ratios for stock portfolios which were low in comparison to those of other types of institutional investors surveyed. This information would indicate a lack of speculative activity on the part of trusts and foundations. Moreover, foundations did not engage heavily in transactions in new stock issues during 1961, the period investigated by the Special Study. During that year only 1 of the 11 foundations studied reported any purchases of original offerings of common and preferred stock and that institutions did not resell any security so purchased during the same year.

Under the Federal securities laws there is no requirement that information with respect to margin trading or short sales be reported to the Commission. Accordingly, we are not in any position to make any specific statements concerning such activities by foundations. We do wish to note, however, that the information developed concerning the 11 large foundations does not indicate any short sales by a foundation of a security registered on a national securities exchange of which the foundation was a 10-percent holder.

The last area the Subcommittee indicated it wished to explore was that of foundations as unregulated sources of credit. Section 7 of the Securities Exchange Act gives to the Federal Reserve Board, now the Board of Governors of the Federal Reserve System, the responsibility to prescribe rules and regulations governing the amount of credit that initially may be extended and subsequently maintained on any security registered on a national securities exchange, the amount of credit that a broker or dealer may extend or maintain, and the amount of credit any other person may extend or maintain for the purpose of purchasing or trading securities registered on a national securities exchange. This Commission has the responsibility of enforcing the

rules and regulations promulgated by the Board of Governors. Regulation T promulgated by the Board of Governors prescribes margin requirements for loans made or arranged by brokers and dealers and for borrowing by brokers and dealers. Regulation U prescribes margin requirements for loans by banks for the purpose of purchasing or carrying registered stocks. To the extent that foundations or trusts wish to purchase securities on credit obtained from a broker or dealer or from a bank, the loan would be subject to the margin and collateral requirements of Regulation T or Regulation U.

Over and above the foregoing, foundations and trusts may borrow from, or themselves become, unregulated lenders. It seems clear from the second installment of the Subcommittee report on tax-exempt foundations and charitable trusts that such institutions have, on at least some occasions, become sources of such unregulated securities credit.

Unregulated securities loans, both those for the purpose of purchasing or carrying securities and those collateralized by securities, but for other purposes, were also surveyed by the Special Study. However, data on the aggregate amount of unregulated security credit and on the breakdown of such amount by type of lender are not available. Based on its evaluation of the importance of the dangers inherent in unregulated security credit, the Special Study has recommended that authority be given to the Board of Governors of the Federal Reserve System to establish initial margin requirements on loans collateralized by securities, irrespective of their purpose, for banks and all persons who make loans to U.S. residents on the collateral of securities traded in U.S. markets as well as for broker-dealers. The Commission, in its comment on the proposal stated that the proposal has merit, but that recognizing the paramount authority of the Board in this area, the Commission will not initiate any action but will work closely with the Board toward resolution of the problems raised.

A report on institutional share ownership, which was released by the New York Stock Exchange last month, casts some light on the place of foundations in the securities markets. According to this report, total assets of foundations increased from \$1.9 billion in 1945 to \$13.8 billion in 1962, or an increase of 627 percent. This, however, is only about 3 percent of the total assets of the institutional investors surveyed by the Exchange.

Foundations held about \$6.7 billion of stocks listed on the New York Stock Exchange in 1962, and it is estimated that the value of such holdings increased to \$8 billion by the end of 1963. This is about 2 percent of the total value of stocks on the Exchange and about 10 percent of institutional holdings.

On the sample days in October 1963 selected by the Exchange foundations accounted for only 0.36 percent of the volume of trading on the Exchange, and only about 3 percent of the volume of trading by institutional investors. Since, as noted above, foundations had about 10 percent of the institutional holdings, their relatively lower volume of trading tends to confirm the Special Study's conclusions that foundations as a group are not active traders.

Finally, I should like to make brief mention of a situation referred to us by this Subcommittee concerning the activities of three related tax-exempt foundations which may involve violations of the Federal

securities laws. Certain details concerning this situation were published by the Subcommittee in the second installment of Tax Exempt and Charitable Trusts; Their Impact on Our Economy (October 16, 1963). To the extent that these activities are set out in that report, they are, of course, well known to this Subcommittee. Certain other information about the matter is being developed by our staff, but they have not completed their inquiries nor have we received any report of their findings. In any event I would not regard it as appropriate to discuss these activities at this time, since there is a possibility that the situation may come before the Commission in its quasi-judicial capacity.

Thank you, sir.

The CHAIRMAN. Thank you very much, sir. Before asking you some questions about your specific testimony, Mr. Cohen, I want to take advantage of this opportunity to inquire of you about the status of the bills concerning placing the banks under SEC regulation. That bill is pending before the Interstate and Foreign Commerce Committee of the House, is it not?

Mr. COHEN. I would be very glad to speak to it, Mr. Chairman.

The CHAIRMAN. Generally what does it provide—that all the banks will be subject, or only those banks that have a certain amount of securities traded?

Mr. COHEN. I think the bill the Chairman is referring to is H.R. 6793 which provides that the larger companies whose securities are publicly traded in the over-the-counter market, should become subject essentially to the same rules to which companies listed on the stock exchange are now subject.

That is to say that such companies would be subject to registration—filing of a registration statement with the Commission, reporting on an annual and periodic basis, the submission to the Commission and to shareholders of information in connection with proxy solicitation, and the subjection of insiders to the short-term trading provisions—short-term profit recovery provisions of Section 16 of the Exchange Act.

The CHAIRMAN. Now, that only relates, of course, to the unregulated market, the over-the-counter market—because most banks are not listed on the Exchange. Possibly one bank is listed on the Exchange. Is that correct?

Mr. COHEN. I think the Chairman is entirely correct. However, it is quite possible that with the passage of the legislation, many other banks may consider seriously the possibility of listing their securities on one or another stock exchange.

The CHAIRMAN. The idea is that they get the benefit of the unregulated market just the same as if they were listed on an exchange, and they do not have the responsibility of making available to the people, their depositors and other folks, information that they would normally have to make available if they were an industrial or business concern and not a bank.

Mr. COHEN. This has generally been the case and continues to be the situation, Mr. Chairman, with some exceptions.

About a year ago, the Comptroller of the Currency adopted a series of rules which were designed to require banks subject to his jurisdiction to file with him and to submit to shareholders certain informa-

tion which is intended to place stockholders in possession of information concerning the operations of the bank.

More recently I have noticed in the newspapers that he has expanded these regulations somewhat.

These are requirements that he has enacted based on the authority that he has as a bank regulator in the national bank area.

These regulations do not have the benefit of the back up, if you will, of a Congressional mandate, nor do these provisions provide, in my opinion at least, the same quality and quantity of protection to the American investor as do the rules and the statutes administered by the Commission.

The CHAIRMAN. I have a feeling that now is the time that we must give more careful consideration to what is going on about the ownership of bank stock.

In my view, a bank should be operated and managed by local people. In other words, people in whom those people have confidence and trust.

There has been a time in this country when directors had to live within a certain distance of the bank. They could not be absentee owners, in other words. It was a local institution, to serve local people.

But now we are getting away from that. And considering the fact that we have a startling amount of funds in trust departments of banks, I feel that we have an obligation to the people, even though they have passed away, to their beneficiaries and others, to make sure that these trust funds are properly and honestly administered.

I have here a statement published in the National Banking Review for June 1964 by Mr. Stanley Silverman. The title is, "Bank Trust Investments, Their Sizes and Significance." It really has some alarming figures. On page 585 of the magazine, table 5, it shows that the estimated assets of trust departments where investment responsibility is exercised, all commercial banks, aggregate \$144,200,000,000 at year end 1963.

So when a bank changes hands, the management of these estates changes hands with the bank stock. Is that not correct, Mr. Cohen?

Mr. COHEN. I cannot quarrel with that statement, sir.

The CHAIRMAN. In other words, if a bank is sold out to mobsters or gangsters, or any other group, they get management of the trust accounts, too.

Mr. COHEN. That is correct. And this is one of the reasons which lie behind the Commission's recommendation to the Congress and now contained in the current bill before the House of Representatives.

If I may—I don't believe I answered fully your question, Mr. Chairman, as to the status of that bill.

The bill, as you know, was passed by the Senate. It has been reported out by the House Interstate and Foreign Commerce Committee. The Rules Committee has issued a rule. And we are hopeful that it will arrive on the floor of the House within the immediate future.

The CHAIRMAN. Did it have strong support in the Committee? What was the vote?

Mr. COHEN. It had very strong support in Committee. The bill as a whole I believe had unanimous support.

I should say further that the bill has the support of all segments of industry, and I do want to emphasize it also has the support of the banking industry.

The American Bankers Association has fully supported this legislation from its inception. There was only one little change in the bill, from the form in which it was originally introduced.

The bill now provides that its provisions shall be administered by the appropriate Federal banking regulatory authority—that is to say, the Comptroller for National Banks, the Federal Reserve Board for member banks, and the FDIC for nonmember insured banks.

The CHAIRMAN. If I understand the situation correctly, the reason the banks have not listed their stocks on the Exchange has been primarily because they would immediately have to submit to you information that they do not like to submit, that is not required of them. Isn't that correct?

Mr. COHEN. That is the situation now.

Under the bill, if enacted, that would no longer be the case. And it is for this reason I believe many banks may consider listing.

The CHAIRMAN. Well, that encourages them to list—if they have got to submit the information anyway. Therefore, if a bank is listed on the Exchange, the local people would have even less information about the bank's ownership than they have now.

Mr. COHEN. No, sir, I don't believe that that would be the situation.

In addition to being subject to the reporting requirements of the Securities and Exchange Act of 1934, the various exchanges have supplemental reporting requirements which in many cases exceed those of the Commission.

I believe information with respect to the bank, its management, and its operations, would be available very generally and very widely.

The CHAIRMAN. But there is no one with power to stop the change of ownership which would carry with it management—that is correct, is it not?

Mr. COHEN. First, I should indicate—

The CHAIRMAN. Well, that is correct, isn't it? In other words, there is no power under existing law that could stop any group from assuming the ownership and management of any banking institution.

Mr. COHEN. There isn't anything to stop such a group, yes, sir. But I think the enactment of the bill now pending in the House would have the effect of requiring very substantial information with regard to any persons who wish to take over a bank by way of proxy solicitation.

In addition, there are certain other provisions of the Exchange Act which I believe would come into play in connection with any such, if I may use the expression, takeover activities which are designed to place information in the hands of the owners of the bank, and also to guard against improper activity.

The CHAIRMAN. But suppose they are only dealing with a few people who own the controlling interest in the bank. You would come into play after the act had been performed, after the management had taken over—not before.

Mr. COHEN. Well, even if they were dealing with a small group, unless that group had sufficient stock to provide a real change of control, it would probably require proxy solicitation. If that occurred, information would be available. If that was not necessary, you are quite right, sir.

The CHAIRMAN. You know, there are a lot of banks going broke now under circumstances that look very suspicious—that they are being raided by outsiders. And we want to be very careful, I think, to make sure that that practice is stopped, if it is possible to stop it.

I refer to one bank in west Texas recently, and one out in Missouri, and other places. It looks as though this is kind of a pattern. And I think we ought to look into that.

Now I shall ask you some questions about your testimony.

Mr. COHEN. Yes.

The CHAIRMAN. What are the names of these 11 foundations to which you refer?

Mr. COHEN. I don't have them here—

The CHAIRMAN. Just a moment. Mr. Cary had promised to submit these names to us after the publication of your study, but we have not as yet received them. So, if you have them, we would like to have them.

Mr. COHEN. Perhaps we may have them here.

The CHAIRMAN. Would you read them off, please?

Mr. COHEN. Yes, sir; we do have them.

The W. K. Kellogg Foundation, The Kress Foundation, The Samuel H. Kress Foundation. Sears-Roebuck and Company—it is designated this way, but I assume it is Sears-Roebuck and Company Foundation. The Grant Foundation. John T. Hartford Foundation. Henry J. Kaiser Family Foundation. David Schwartz Foundation. Standard Oil Foundation. Aaron Straus and Lilly Straus Foundation. And Pew Memorial Trust.

The CHAIRMAN. That list doesn't include the large ones.

Mr. COHEN. These were 11 of the larger ones that the study surveyed. It may not include all of the very large ones.

The CHAIRMAN. Now, I believe you said that you were dealing with 11 of the largest foundations. I think you are in error on that, Mr. Cohen.

Mr. COHEN. I am sorry. I think you are right, Mr. Chairman. I have been given the wrong list. Actually, these are names of foundations which we obtained from your report. We have the wrong list here.

The CHAIRMAN. Well, suppose you read the right list.

Mr. COHEN. I don't have it here, but we will supply it before the end of the day.

The CHAIRMAN. Suppose you send for it. We will wait here.

Mr. COHEN. Yes, sir.

The CHAIRMAN. Fine.

In the past, the Commission has advised us that it had no information on the following activities of tax-exempt foundations and charitable trusts: Insider deals, stock price manipulations, margin trading,

short sales, involvement in proxy fights, foundations as unregulated source of stock market credit, or speculation in commodity futures. In fact, on May 15, 1964, Mr. Cary wrote me that he doubted that he would be able to contribute anything of value to our hearing because the Commission has had "very limited experience" with foundations. Mr. Cary also stated that, although the purchase and sale of securities by foundations come within the Commission's purview, the Commission's information with respect to such transactions is "fragmentary."

Do the figures you are quoting mean that you have developed such information? If such is the case, will you please submit all such data to this Committee? You will, of course, submit that list when it comes in.

Mr. COHEN. Yes, sir.

The CHAIRMAN. And it will be here soon, will it?

Mr. COHEN. Yes, sir.

The CHAIRMAN. All right. Fine. And other data, too, we would like to have.

Mr. COHEN. Whatever data we have—

The CHAIRMAN. The information I mentioned here—insider deals and such matters. When you look over your transcript, will you submit that, too?

Mr. COHEN. We will supply such information as we can, Mr. Chairman. I do want to emphasize what Mr. Cary said. We don't have the information by foundations or trusts, and I am not altogether sure I can comply fully with your request. But we will do the best we can.

The CHAIRMAN. On page 4 you state that in connection with your recent special study "An investigation was made of the trading practices of institutional investors, including a detailed investigation of 11 large foundations estimated to hold 56 percent of the stock holdings of all foundations as a class. The information obtained from those foundations does not suggest any special problem in the area of reporting of security holdings by such foundations or any short-swing trading by them. On the contrary, the information indicates that the 11 foundations studied did not engage in short-swing trading during the period beginning January 1, 1961."

What is your source for the statement that the 11 foundations are "estimated to hold 56 percent of the stock holdings of all foundations as a class"? Has the Commission examined the portfolios of all the foundations in the country?

Mr. COHEN. Well, I can't speak from personal knowledge, Mr. Chairman, but our special study did make some detailed investigations of the 11 foundations, and attempted to, and I believe did, obtain some information with respect to stock holdings held by foundations as a group.

Now, there are, of course, a number of different figures that I have seen from time to time. I think that an attempt was made to verify that figure as best could be done at that time, and this was the estimate of the special group concerned with this matter.

The CHAIRMAN. I am interested in this because even the Treasury Department doesn't know how many foundations there are in existence today. Nor does the Treasury have any information on the extent of

the stock holdings of the Nation's foundations. The Treasury has admitted this.

Now, of course, that necessarily poses a question to us as to the source of your information. And that information we would like to have.

Mr. COHEN. We will provide it.

The CHAIRMAN. Can you tell us now?

Mr. COHEN. I can't at this moment, no, sir.

The CHAIRMAN. On page 5 you state, "The Commission does not maintain statistics," for foundations and charitable trusts as a separate group. This is quite plain.

Then on page 6 you state that your investigation of the behavior of institutional investors, including the 11 large foundations, "does not suggest any special problems in this area." By that you mean that it doesn't "suggest any special problems" among the 11 foundations included in your study, is that correct?

Mr. COHEN. Essentially, that is correct, yes, sir.

The CHAIRMAN. On page 6 you also state "this information would indicate a lack of speculative activity on the part of trusts and foundations." How can you arrive at such a judgment from examining only 11 foundations, none of which are known by you to be tax exempt?

Mr. COHEN. I must confess it is a rather limited sample.

The CHAIRMAN. And you don't have enough information at this time to answer that?

Mr. COHEN. I do want to advert again to the recent study and previous studies made by the New York Stock Exchange with respect to institutional investors. They have broken out foundations and trusts, and their figures seem to support this conclusion.

The CHAIRMAN. From those statements, it seems to me that you are suggesting that there is common action on the part of foundations in the purchase and sale of securities. If such is the case, this could limit opportunities for certain companies who are not part of the foundation clique.

Mr. COHEN. I didn't mean to suggest that, sir.

The CHAIRMAN. Outside of the 11 foundations included in your study, the SEC has no information as to the extent that foundations are involved in speculation and trading on margin, is that correct?

Mr. COHEN. That is correct.

The CHAIRMAN. In other words, the information available at the SEC throws no light on the question of speculation or margin trading by foundations?

Mr. COHEN. As a group, no, sir.

The CHAIRMAN. On page 9 you state that, according to a report of the New York Stock Exchange, foundations held about \$8 billion stocks listed on the New York Stock Exchange at the end of 1963. Do you know what the source is for this figure of \$8 billion? Is it based on the foundations' carrying value or market value?

Mr. COHEN. I assume that it is market value, sir.

The CHAIRMAN. Normally foundations don't use market value. I do not say that the market value is not used here. But I am just stating normally market value is not used.

Mr. COHEN. I understand that. In arriving at these figures, particularly if you will notice the reference to the figure at 1962 and the



estimated increase by the end of 1963, it seems clear to me—although I don't have a report before me, and that is my recollection—that they were speaking in terms of market value.

The CHAIRMAN. How does the New York Stock Exchange know what the total stock holdings of the Nation's foundations are when the Treasury Department doesn't know the answer?

Mr. COHEN. I wouldn't know the answer to that, sir.

The CHAIRMAN. However, that \$8 billion holding represents a sizable figure, does it not? Does the \$8 billion figure include foundation holdings that may be registered in the names of nominees?

Mr. COHEN. Well, sir, if there has been some concealment, then it may well not include those amounts. I would assume that in making its study, the questionnaires and the other data collected were properly designed to elicit information of that character.

The CHAIRMAN. The truth is they could not give you that information.

Mr. COHEN. They couldn't, certainly.

The CHAIRMAN. So the answer is it could not include nominees.

Mr. COHEN. Yes, sir. Perhaps I did not make myself clear.

Foundations, for example, may hold stock in a street name, in the name of nominees, in the name of a bank. It is that type of nominee which I believe would be included in the \$8 billion.

The CHAIRMAN. That is a known nominee.

Mr. COHEN. That is a known, or an admitted nominee. There may be situations where there is an attempt at concealment. And in such situations they would not be included in the \$8 billion figure. But I do not wish to suggest that there is any substantial concealment. I have no information to suggest that.

The CHAIRMAN. Well, how would the Exchange know who the beneficiary is, if a beneficiary was a foundation, and how would they know to list it as a foundation account?

Mr. COHEN. Well, the Exchange, if I understand it—and I am not sure I understand all the details of the process of gathering this information—does elicit information from known nominees. There is a volume that thick—I am sure you have seen it, sir—which contains the name of all nominees for security holdings.

They do elicit information from the banks.

The CHAIRMAN. If the nominees do not object to disclosing.

Mr. COHEN. That is right, sir.

The CHAIRMAN. But that doesn't mean that these nominees are disclosing the beneficiaries.

Mr. COHEN. That may be. I have no information.

The CHAIRMAN. On page 6 you state that "Foundations did not engage heavily in transactions in new stock issues during 1961." You are referring there to only the 11 foundations?

Mr. COHEN. Yes, sir.

The CHAIRMAN. You have not collected any information on all foundations in this area, is that correct?

Mr. COHEN. That is correct.

The CHAIRMAN. On page 5 you state, "These institutions have not engaged in short-swing transactions on the basis of any inside information." By "these institutions" you mean only the 11 foundations, is that correct?

Mr. COHEN. Yes. We do mean that. But I do also want to qualify the statement. I think what I said was that the information we had would indicate that they had not engaged. I cannot testify that they did not in fact engage in any such transactions.

The CHAIRMAN. I don't see how you can draw such a judgment from 11 foundations, unless your information is much better than the Treasury's. And the Treasury doesn't know.

Mr. COHEN. I should explain—my statement there is perhaps inadequate. I am speaking in terms of short-swing transactions, and that by statute is defined to be sales and purchases or purchases and sales within a 6-month period. And the purport of my statement is only to indicate that on the information we have with respect to these 11 foundations there was not such trading within that short period.

The statute attempts to obviate the difficulties of proof as to the use or misuse of inside information by providing that in all such short-swing transactions, if they result in a profit, and if they are effected by insiders—that profit is recoverable by the company.

The CHAIRMAN. Have you searched the Commission's records and collected and collated information on insider deals by other foundations? If you have, will you please submit such information to this subcommittee?

Mr. COHEN. I am sorry, sir. I am not altogether sure just what information you are asking for. Would you please repeat that?

The CHAIRMAN. Insider deals.

Mr. COHEN. We would not have information of that kind—unless it related to a particular offering of securities or a particular situation in which a trust or a charitable foundation was more than a 10-percent holder of the securities of a particular company. We have not collated information of that character.

The CHAIRMAN. On page 2 you state, "We have examined proxy materials filed with the Commission in all proxy contests since January 1, 1963, and have determined that only 11 trusts or foundations have been mentioned in the proxy material filed since that time. None was a participant in a proxy contest; 10 were mentioned because of the relationship of a participant with the trust, and the other because it owned more than 10 percent of the securities with respect to which the solicitation was conducted and under our proxy rules such owners must be identified and their share holdings set forth."

You also state that your "Records do not reveal whether any of the 11 trusts or foundations is tax exempt." Since we do not have the names of these organizations and since you do not know whether any of them are tax exempt, we, of course, have no way of knowing whether any of them come within the purview of our study.

There is every indication that foundations have entered into proxy fights.

Mr. COHEN. Excuse me, Mr. Chairman. The 11 that are referred to here—that is, those 11 trusts or foundations that I read before file reports with the Commission. That was the list that I had. It was a list of 11.

The CHAIRMAN. Now, wait a minute.

Mr. COHEN. I am sorry.

The CHAIRMAN. I don't understand that.

Mr. COHEN. Yes, you are right. I am glad you caught me. There are two parts to that statement. If I may, I would like to explain it a little bit.

The CHAIRMAN. All right.

Mr. COHEN. Under our proxy rules, when a proxy contest occurs, every member of management—that is every member of the board of directors, and the issuer, and every other person who may be contesting with management, is deemed to be a participant.

As soon as the proxy contest begins, each such person is required to file with the Commission a schedule denominated as Schedule 14-B, in which he is required to give his occupation, background, his interest in the securities of the company, and those of his associates.

Now, there may be occasions when an associate may be a charitable trust in the sense that he is a trustee or some fiduciary connected with that foundation or trust.

I understand that 10 of the 11 I referred to in my statement had a relationship either to a member of the management of the company, or to a person who was a participant in the contest. One other was a trust which owned more than 10 percent of the securities of the company and, therefore, it had to be named, and that is required whether or not there is a contest.

The 11 that I have named here—and I am finally getting around to it, Mr. Chairman, with your indulgence—the 11 that I named here are trusts which have a beneficial interest in more than 10 percent of the securities of a company, of a particular listed company.

The CHAIRMAN. There is every indication that foundations have entered into proxy fights. According to press reports, there have been a number of such cases. In 1960, during the battle for control of the Endicott Johnson Corporation, the Albert A. List Foundation of Byram, Connecticut received 54,000 shares of Endicott Johnson from the J. M. Kaplan Fund of New York City. These shares were used by Mr. Albert A. List in his unsuccessful attempt to acquire control of the Corporation.

Our records indicate that on February 20, 1959, a securities analyst employed by JEMKAP, Incorporated, submitted a memorandum to the J. M. Kaplan Fund which is connected with JEMKAP, stating as follows:

Endicott Johnson Corporation may be a likely target for a "takeover" situation in view of its rich net working capital position to be "sweetened" by a rebound profitwise. The common stock of Endicott Johnson Corporation is unusually cheap on the basis of both its rich balance sheet and prospective earning power about to materialize. As against a seemingly limited risk of the downside, there is apparently a capital appreciation potential of some 50 percent on the upside. An even greater gain could result marketwise if control of this company were in the hands of interests aimed at acquisition or merger. Endicott Johnson should prove to be a well heeled investment.

Also, according to press reports, during the struggle over the Alleghany Corporation between Allan P. Kirby and the Murchison Brothers, the Fred M. Kirby Foundation purchased Alleghany shares which had not previously paid a dividend.

On page 4 you state that, "The ownership reports filed with the Commission pursuant to this section include a number of reports by tax-exempt foundations and trusts. The Commission does not maintain, however, any statistics reflecting the holdings or transactions of trusts or foundations as distinct from any other category of 10-percent securities holders." Will you collect these statistics for purposes of our study and submit them to us?

Mr. COHEN. May I explain the situation there, Mr. Chairman?

As I indicated, we don't collect separate statistics for foundations or trusts. But in connection with the annual reports and other reports filed by listed issuers, and by other companies that are required to file reports with the Commission, our forms require identification of any person who holds more than 10 percent of the voting securities of that company. And it is in connection with that type of reporting, and in connection with the proxy solicitation, in the manner I described earlier, that we learn of the existence of these charitable foundations and trusts.

In order to gather this information, it would require the review of some 3,000 reports each year, and about 2,000 proxy statements.

I don't know whether there is any other means available to us to gather this information. We will review the situation, Mr. Chairman. But I just want to indicate the enormity of the task.

The CHAIRMAN. You had some information upon which your statement was based, I assume, Mr. Cohen.

Mr. COHEN. As far as proxy contests are concerned, I can supply that information readily, because there are usually not more than about 40 proxy contests each year.

The CHAIRMAN. All right. File that, if you will.

Mr. COHEN. Yes, sir.

The CHAIRMAN. Has the Commission examined all the securities transactions in the second installment of our study, Mr. Cohen?

Mr. COHEN. The second installment of your study, sir, has led to a very broad investigation in our shop. As I indicated in my statement, that study is not completed, and we have not received a report.

Mr. Pollack, on my left here, is in charge of that study. If there is anything regarding it you would wish, perhaps he can supply some information.

The CHAIRMAN. When would it be completed and a report made on it?

Mr. POLLACK. Mr. Chairman, I would be hopeful that we could complete that before the end of the year. It is difficult to make estimates, in view of the complications that you run into in conducting as broad an inquiry as we are. I am sure in the preparation of your own report, you encountered some of the difficulties that we are in unraveling some of the transactions. But we are actively pursuing this at the very moment.

The CHAIRMAN. Not so long ago Mr. Cary told us it would be ready within 5 months, which is not far from your estimate now, of course. I assume that you have run into difficulties, as we have, on getting the information. And necessarily you are sometimes delayed by reason thereof.

Mr. COHEN. There is one thing I do know, Mr. Chairman. It is being pursued with vigor.

The CHAIRMAN. And you expect to have a report before the first of the year, and a public report will be made on it.

Mr. COHEN. I cannot say it will be a public report, sir, because it may involve violations of law, it may lead to other things—I just don't know.

The CHAIRMAN. You will send us a copy of the report?

Mr. COHEN. We will send you a report.

The CHAIRMAN. Mr. Cary promised us a report, since it is based upon our study.

Mr. COHEN. Yes, sir.

(A report submitted to the subcommittee by the SEC, under date of November 30, 1964, appears as Exhibit 53, page 415. Also, see Exhibit 52, page 413 for comments of Mr. William McC. Martin, Jr., Chairman, Board of Governors of the Federal Reserve System.)

The CHAIRMAN. With respect to the securities transactions described in the second installment of our study, are there any areas of possible violations in which you may have problems because of the statute of limitations?

Mr. COHEN. I cannot speak to that, sir, but Mr. Pollack perhaps can.

Mr. POLLACK. The answer is yes.

The CHAIRMAN. Could you, without disclosing information which you would not want to disclose at this time tell us something in general about what the problems are?

Mr. POLLACK. Well, various of those transactions go back, as I recall, to the early 1950's. With respect to those, and insofar as the statute of limitations may be applicable in an area we would have difficulty in pursuing those. But that, of course, is a consideration which we consider as our investigation proceeds. But various actions not subject to a statute of limitations may be available, even with respect to those, and they are actively being inquired into.

The CHAIRMAN. On page 9 you refer to the second installment of our study, with respect to possible violations of the Federal securities laws by certain foundations covered therein. These activities were not known to the Commission prior to the issuance of our report, is that correct?

Mr. COHEN. To the best of my knowledge, yes, sir.

The CHAIRMAN. With respect to the questionnaire that the Commission sent out to institutional investors, it did not directly involve the matter of credit arrangements entered into by foundations for purposes of market activities, is that correct?

Mr. COHEN. I believe that is correct.

The CHAIRMAN. Let me give you a few preliminary figures we have developed on the activities of the 546 foundations under study by this Committee.

One part of our study relates to the moneylending and borrowing activities of 546 foundations. To this end, we required the foundations to submit schedules of all loans receivable and loans payable during the period of 1951 through 1962.

There is indication that funds loaned out by those foundations during the period of 1951 through 1962 is about \$841 million. Their borrowings total \$251 million.

The study is far from complete, but a preliminary examination of some of the loans receivable indicates that 22 foundations made loans of \$19 million to assist borrowers in purchasing securities.

A similar preliminary examination of some of the loans payable indicates that 23 foundations borrowed \$17 million for the purpose of purchasing securities.

We will need additional information from many of the foundations in order to determine the exact purpose of the funds loaned out or borrowed.

For example, some of the foundations state that certain loans were made for "general corporate purposes." There is no indication whether "general corporate purposes" includes the purchase of securities or other assets.

On page 9 you reach the conclusion that "foundations as a group are not active traders." I would like to read to you some preliminary figures we have developed with respect to the market activity of the 546 foundations that we have under study.

For some time we have been looking into the stock market activities of the 546 foundations under study by this Subcommittee. Although the study is not complete as yet, preliminary figures indicate that, during the period of 1951 through 1961, the 546 foundations sold over \$8.6 billion of securities, showing a capital gain of over \$1.8 billion. These figures include \$3.7 billion of stock sales, showing a gain of \$1.8 billion.

Preliminary figures also indicate that, during the period of December 1, 1961 through June 30, 1962 (the period of the big plunge in 1962) the 546 foundations sold 8.4 million shares of traded stocks for a sales price of \$565 million, showing a gain of over \$421 million. During the same period, the 546 foundations purchased 4.4 million shares of traded stocks at a cost of \$201 million.

In your view, do these figures indicate a sizable amount of market activity by foundations?

Mr. COHEN. I believe they do.

The CHAIRMAN. Schedules submitted by the Lillia Babbitt Hyde Foundation, of New York City, show acquisition date of October 19, 1962 and sales date of March 5, 1962 on 2,000 shares of Pacific Gas and Electric common. The gross sales price for the 2,000 shares was \$70,750, with the Foundation showing a gain of \$9,052.55.

Similarly, schedules submitted by the Clark Foundation, of New York City, show acquisition dates of July 27, 1962 to July 30, 1962 and sales dates of February 28, 1962 on 700 shares of Westinghouse Air Brake common. The gross sales price for the 700 shares was \$20,387.50, showing a loss of \$4,410.49.

On the surface, would these two cases seem to indicate short sales on the part of the Hyde and Clark foundations?

Mr. COHEN. Well, I may have missed the period.

The CHAIRMAN. Possibly I went too fast on that.

Mr. COHEN. I am unable to state, on the basis of this information alone, whether these were short sales. I did miss the dates. But if they were within the 6 months period—I am sorry.

The CHAIRMAN. They were within the 6 months period.

Mr. COHEN. Then they would be short-swing transactions. But, again, I don't know whether or not those particular trusts were holders

of more than 10 percent of the stock of the company involved, and, therefore, subject to the sanctions of Section 16 of the Exchange Act. I believe not.

The CHAIRMAN. Would you agree, Mr. Cohen, that a person who effects a public distribution of securities for a foundation, which controls the corporate issuer of the stock, is an underwriter within the Act?

Mr. COHEN. Well, whether or not he is an underwriter, if such a foundation effects a public distribution of securities, it would be subject to registration under the Securities Act of 1933, and we have had many such in the history of the Commission.

The CHAIRMAN. Would you agree that the question of control may involve situations where the foundation appears to be under the control or domination of the donor, who is himself a controlling person of the issuer?

Mr. COHEN. If such a situation occurred, and if I understand your question, any public offering by the foundation would be subject to registration.

The CHAIRMAN. If such a foundation decides to make a public offering of stock through an underwriter of a controlled corporation, is the foundation required to file a registration statement, cause a prospectus to be published and to take the same steps as may apply with respect to any initial issue?

Mr. COHEN. It is essentially the same. Technically the issuer files a registration statement, but a prospectus must be provided to investors.

The CHAIRMAN. If a foundation acquired stock under circumstances which would constitute the foundation an underwriter—such as a purchase or grant of stock from an issuer or controlling person with a view to distribution—would registration be required?

Mr. COHEN. Generally speaking, yes, sir.

The CHAIRMAN. As I understand it, under the law, insiders—directors and officers of issuing companies, or persons who are beneficial owners of more than 10 percent of any class of listed equity securities—are required to file statements with the SEC and the Exchange disclosing their ownership of such securities and showing changes in ownership which have occurred during the preceding calendar month. Profits earned by such insiders by reason of their relationship to the issuer from a purchase and sale or sale and purchase within a 6-month period inure to and are recoverable by the issuing corporation,

Do these provisions apply to foundations, just as they apply to any other stockholder?

Mr. COHEN. Yes, sir.

The CHAIRMAN. Even if the foundation is holding the stock in trust?

Mr. COHEN. Yes, sir, if it has a beneficial interest.

The CHAIRMAN. Would you agree that except for the provisions of the Act, which prohibit manipulation of security prices through the facilities of a national securities exchange and on the over-the-counter markets, there appears to be no special provision in the Act which would prevent an officer of a corporation who holds the position of director or trustee in a foundation from using that position to effect

transactions by the foundation which would indirectly benefit him or his company.

Mr. COHEN. There is nothing to prohibit such transactions, sir. But if he or a controlled foundation effects transactions on the basis of information known to him and not known to others, he and the foundation may both be subject to civil and criminal sanctions.

The CHAIRMAN. Do you have the list yet, Mr. Cohen?

Mr. COHEN. It hasn't arrived as yet. We will supply it before the close of business today.

The CHAIRMAN. Mr. Cohen, your testimony before the Appropriations Committee was called to our attention about the time it was made. But we didn't get a copy of it until the book was published later on. It deals with the Independent Offices Appropriations Act, 1965. The testimony appears on page 628 as follows:

Mr. COHEN. I might add, Mr. Edwards, that some of the information in Mr. Patman's report actually came from information on file with the Commission. I would only supplement what Mr. Woodside said to indicate that on occasion foundations have been used by individuals to carry out various purposes, such as proxy fights and things of that sort. In that area, our job has been limited to eliciting the relevant facts and getting them out in the public prints. This is what we have done. As I say, Mr. Patman got a great deal of his information from our files.

Now, Mr. Cohen, will you please tell us what information we received from you?

Mr. COHEN. It was my understanding—and that statement is based on that understanding—that members of your staff reviewed the files in the offices of the Commission and discussed the coverage of the reporting requirements with members of our staff, and that certain of the information that formed the basis of that excellent report was based on information in the Commission's public file.

The CHAIRMAN. Well, I know you are honest in your views on that, Mr. Cohen. I know you are stating it exactly the way you understand it. But the truth is that no information appeared in our reports that came from your files.

Mr. COHEN. I am glad to be corrected, sir.

The CHAIRMAN. Of course you had a right to rely upon the staff, and I am sure that they probably told you what they thought was the true situation. But the truth is we did not receive any information from your files that was put into the report.

Now, Mr. Harvey, do you have a question?

Mr. HARVEY. Mr. Chairman, I first want to compliment you—because you are very knowledgeable in the field of banking and investments—on the thoroughness with which you have questioned our witness this morning.

I only would like to ask a supplementary question for which I will have to give you just a little preface.

In my rather limited knowledge of the operation of foundations, I have observed that there are two types of operation practiced by the foundations:

One has to do with a foundation which may have been the beneficiary of the assets in the beginning of a single block of stock of some corporation, or maybe at most two or three, and which has realized that, in



order to better preserve the continuity of its income, must sell some of those stocks, or exchange them for stocks from other well known corporate entities.

And then there is the other type of operation in which a foundation can and in certain instances has been used as a front for market trading.

Would you agree that this is a true statement?

Mr. COHEN. Certainly on the basis of the report of this subcommittee that I have read, and it is a very excellent report indeed, it is a true statement.

Mr. HARVEY. You are in a position to observe the activities of practically every one of any consequence that deals on the board of trade.

Do you have any information indicating that the bulk of this trading that is going on is being done for other than proper purposes?

Mr. COHEN. I have no knowledge to which I can now speak. As I have indicated, the report of the subcommittee adverted to three foundations and provided substantial information which, as I also indicated, was not theretofore available to the Commission, and which we are now investigating.

It may be that the results of that investigation may provide me with a better basis for answering your question.

Mr. HARVEY. How long have you been with the Commission, Mr. Cohen?

Mr. COHEN. I have been with the Commission in one capacity or another for 22 years.

Mr. HARVEY. Then, I think it is a fair question to ask you, because of the long tenure you have served there, if you have actual and factual data that you can present that foundations are using their rather cloistered protection for improper purposes on the board of trade?

Mr. COHEN. There are very few situations that have come to my attention that could even approach that situation.

I do wish to hasten to add, however, that there have been any number of situations that have come to my attention in which, for example, proxy contests have occurred, and certain persons who were participants in those proxy contests undoubtedly had the benefit of the share holdings of the trust in assisting them in their endeavor to unseat a management, or to obtain control of a company in another way.

This is a matter as to which I can speak from personal knowledge.

Mr. HARVEY. That is exactly what I am asking, Mr. Cohen, and I think you have tried to be honest in your answer. I know that anyone who has been associated with the Commission as long as you have must have a very thorough knowledge of this segment, especially since you know our Subcommittee has been interested in it.

Now, could you submit for our benefit the names of any of these people whom you think may have been engaging in this kind of activity?

Mr. COHEN. Mr. Harvey, I indicated earlier that I would attempt to provide the Subcommittee with information in this area—that is, with respect to proxy contests—for the period beginning January 1, 1963, or if the Committee wishes us to go back a little farther, we would be glad to do that, too.

Now, so far as other areas of activities to which the Subcommittee has adverted in its report, I am not nearly as well prepared to speak from personal knowledge.

I have the feeling that there are other situations which have come to our attention—and I cannot now name one—through the years in which a particular person may have used the facilities of a related foundation or trust in effecting a certain series of securities transactions which may not have been wholly consistent with law. As I said before, we don't keep that information by that category. Any such information we could submit would probably be incomplete, and we would have to depend on the memory of gentlemen like Mr. Pollack, of cases that he may have been associated with.

Mr. HARVEY. Are there others who are on the staff of the Commission—Mr. Chairman, I hope you will indulge this question—

The CHAIRMAN. Yes, sir.

Mr. HARVEY (continuing). Since you, Mr. Cohen, have been there many years you must know most of them intimately—who could be more helpful than you in supplying this information, even if it is necessary to give it in confidence?

Mr. COHEN. I will endeavor, when I return to the office, to speak to all those who I believe would be in a position to supply this information. I only want to add the further caveat that we don't have this information by foundation or trust in any organized way, and the information that we could provide would necessarily be incomplete.

Mr. HARVEY. Mr. Chairman, I again repeat my request.

We are dealing with a very sensitive issue here, and one that may hold, if we are not able to properly cope with it at this time, a good deal of threat to the future well being of many of our citizens. If the Commission has other people on its staff who do have information, even though it may not be documented, that can be helpful to the Committee, and even if they request that it be given to us in confidence, we have a perfect right to request such information be given to us.

Mr. COHEN. Mr. Chairman, may I suggest—because I do wish to comply with Mr. Harvey's request—that we review the situation, prepare a memorandum, and submit it to you, sir.

The CHAIRMAN. Well, that will be satisfactory for the present?

Mr. HARVEY. If it is satisfactory with the Chairman.

The CHAIRMAN. It is all right with me, if it is all right with you, for the present. And then if it is not satisfactory, we will take it up again.

Mr. HARVEY. Yes, leave the door open, in other words.

Mr. COHEN. Yes, sir.

Mr. HARVEY. That will be fine.

The CHAIRMAN. Mr. Cohen, you haven't received that information yet?

Mr. COHEN. Excuse me, sir.

May I approach the bench, sir?

The CHAIRMAN. Yes, sir, you may proceed.

(Discussion off the record.)

The CHAIRMAN. We will take a few minutes recess. Let's take a few minutes recess.

(A brief recess was taken.)

The CHAIRMAN. The Committee will come to order.

Mr. Cohen, did you want to make a statement?

Mr. COHEN. Yes, sir. In my statement I adverted to the special study of the securities market. That study was primarily concerned with the markets, and not with foundations as such.

However, an aspect of the study undertaken by that group was activities of institutional investors, in the course of which they did study a number of the activities of a number of these charitable foundations.

Now, it is my understanding that these foundations provided the information readily enough. But, at that time—and I don't know if I can put it precisely, because the person who engaged in those negotiations is not here—but it is my understanding that they had an understanding that the Commission would use the information they provided in the aggregate, and while there was no commitment by the Commission that it would not reveal any names, there was an understanding that the Commission would not reveal the names of the foundations.

Now, I have the list here, and I am very happy to submit it to the Chairman, and if the Chairman feels that it should be made part of the record I am sure that will be satisfactory.

The CHAIRMAN. You see, it is rather indirect, your information.

Mr. COHEN. Yes, it is, sir.

The CHAIRMAN. You don't know for sure what statements were made concerning its use. The gentleman is not available.

Mr. COHEN. I think that is a fair statement of the situation, because I have talked to two or three people who were concerned in the activities of the study—although they are not the persons who were actually negotiating this matter with the foundations.

The CHAIRMAN. Well, suppose you send the list up here, if you please.

Mr. COHEN. Yes, sir.

The CHAIRMAN. Mr. Cary, of course, made the commitment to me—to submit the information.

Mr. COHEN. I would like to carry it out for him.

The CHAIRMAN. I know. But I just wondered if we should ask you to carry it out—if we shouldn't ask him to carry it out.

Mr. COHEN. Well, sir, I feel fairly certain that he would explain it essentially as I have, and I think his position would be essentially the one that I have expressed.

The Commission has no objection. I am quite certain that the foundations would have no objection.

I merely wanted to explain the circumstances under which we got the information.

Mr. HARVEY. Well, can the Committee assume, then, that you are assuming full responsibility in replying for Mr. Cary?

Mr. COHEN. Yes, sir.

The CHAIRMAN. All right. We will put these in the record, then. You can take it and read the names out, please.

Mr. COHEN. The list are the following:

Ford Foundation, Rockefeller Foundation, Duke Endowment, 30 Rockefeller Plaza, New York, John A. Hartford Foundation, Carnegie Corporation, W. K. Kellogg Foundation, Alfred P. Sloan Foundation, Lilly Endowment, Inc., Commonwealth Fund, Danforth Foundation, and Kresge Foundation. Those are the 11, sir.

The CHAIRMAN. Obviously you have some of the largest foundations. Do you have any further questions, Mr. Harvey?

Mr. HARVEY. No, I have no further questions, Mr. Chairman.

Mr. COHEN. If I indicated these were the first 11 in order of size, perhaps I should modify that by saying it is my impression that these are a sample, and include 11 of the largest ones. And, as I indicated, on the basis of the information developed by our statisticians, and obviously that involved a procedure of projection, based on available figures, they represented approximately 56 percent of the aggregate holding.

The CHAIRMAN. That is the part we just don't see at all, Mr. Cohen. We don't know and the Treasury doesn't know. You have to have something to say it is 56 percent of.

Mr. COHEN. Yes, sir. I feel myself, that your staff certainly and the Internal Revenue Service has much more and better information regarding this subject than we. And I am prepared to sit corrected here as of this moment.

The CHAIRMAN. Well, Kresge, for instance—several foundations that are not on your list would be larger than Kresge. Anyway, you have submitted the 11 that you used. That is the information we asked for. And we thank you very much, sir.

I wish you would advise Mr. Cary we may ask him to come here at some convenient time mutually satisfactory.

Mr. COHEN. Yes, sir.

Mr. HARVEY. Mr. Chairman—in furtherance of the request I made to you, Mr. Cohen, since you yourself may not be back, I wish you would relay our request to Mr. Cary, and if he does have people and personnel there who have certain knowledge, that they, when Mr. Cary comes, can come here.

Mr. COHEN. Yes, sir. And if the Committee wants me back, I will be back, too.

The CHAIRMAN. We would like for you to be available if we need you, Mr. Cohen. We have no plans at this time to ask your return. We appreciate your testimony. It will be helpful to us.

Mr. COHEN. May I add one word? It has just been brought to my attention that we do have the precise statement made in the study

report with respect to the selection of these 11. It appears at page 837 of par II of the report of the Special Study of the Securities Markets of the Securities and Exchange Commission, House Document No. 95, Part II. And it is footnote 45 on that page.

The respondents were selected primarily from among the largest in each institutional category studied, but also with some effort to include coverage of different sizes and geographical locations of institutions within each category.

Now, that footnote relates to all of the institutions studied, not just the foundations and the trusts. But that is the statement of the study.

The CHAIRMAN. The 56 percent part is the part that I cannot understand—when we just don't know what 100 percent is.

Mr. COHEN. Well, we will try to provide some information on that score, too.

The CHAIRMAN. If you will, please, sir. Thank you very much. We appreciate your testimony. And our thanks to the gentlemen who accompanied you.

The Committee will stand in recess subject to the call of the Chair. (Whereupon, at 11:45 a.m., July 23, 1964, the subcommittee recessed, subject to the call of the Chair.)

## TAX-EXEMPT FOUNDATIONS: THEIR IMPACT ON SMALL BUSINESS

MONDAY, AUGUST 10, 1964

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE No. 1 ON FOUNDATIONS OF THE  
SELECT COMMITTEE TO CONDUCT STUDIES AND  
INVESTIGATIONS OF THE PROBLEMS OF SMALL BUSINESS,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 10:05 a.m., in room 1301, Longworth House Office Building, Hon. Wright Patman (chairman of the subcommittee) presiding.

Present: Representatives Patman, Evins, Roosevelt, and Harvey.

Also present: H. A. Olsher, Director of Foundation Studies; Myrtle Ruth Foutch, Clerk; John J. Williams, Minority Counsel; and Eugene Loehl, Assistant Minority Counsel.

The CHAIRMAN. The Committee will come to order.

Mr. Harding, are you ready to proceed?

TESTIMONY OF BERTRAND M. HARDING, ACTING COMMISSIONER, INTERNAL REVENUE SERVICE, ACCOMPANIED BY MITCHELL ROGOVIN, ASSISTANT TO THE COMMISSIONER; SHELDON S. COHEN, CHIEF COUNSEL; AND ARTHUR B. WHITE, SPECIAL ASSISTANT TO CHIEF COUNSEL, INTERNAL REVENUE SERVICE

Mr. HARDING. Yes, Mr. Chairman.

The CHAIRMAN. Identify, if you will, please, the persons accompanying you.

Mr. HARDING. I have Mr. Sheldon Cohen, the Chief Counsel of the IRS, in the center; Mr. Mitchell Rogovin, Assistant to the Commissioner, next to me; and Mr. Arthur B. White, Special Assistant to the Chief Counsel, on Mr. Cohen's left.

The CHAIRMAN. This is the fourth session of hearings of Subcommittee Number 1 on the subject of the Federal Government's supervision of tax-exempt foundations and charitable trusts.

On behalf of the Subcommittee, I should like to welcome our fourth witness, Mr. Bertrand M. Harding, Acting Commissioner of the Internal Revenue Service. Do you have a prepared statement, Mr. Harding?

Mr. HARDING. I do not, Mr. Chairman.

The CHAIRMAN. Then I shall just proceed with the questioning. Later in the hearing this morning, I shall ask you about the J. M. Kaplan Fund, Inc., of New York City (assets almost \$15 million)—a matter in which the National Office of the IRS has been involved

for some time. Therefore, I would suggest that you have one of your aides bring you the complete file on the J. M. Kaplan Fund, including correspondence, memoranda, summaries of hearings, conferences, etc. Would you do that, please?

Mr. HARDING. Chief counsel advises me that the case is under active audit in New York and that the major file is at that location, rather than in Washington. We probably have a correspondence file in the National Office.

The CHAIRMAN. Well, just have available what you have here, then, please, Mr. Harding.

Mr. HARDING. Yes, sir.

The CHAIRMAN. Mr. Harding, how long have you been with the IRS?

Mr. HARDING. Eleven years, sir.

The CHAIRMAN. What positions have you held?

Mr. HARDING. I started as the Assistant to the Deputy Commissioner, became Assistant Director of the Collection Division, the Assistant Commissioner for Planning and Research, and in 1961, was appointed Deputy Commissioner. In July of this year, I was designated Acting Commissioner of the Internal Revenue Service.

The CHAIRMAN. During Mr. Caplin's testimony of July 22, I mentioned that, although a few Government officials and foundation executives would have us believe that most of the abuses of tax exemption are by small foundations, we have found that violations of Treasury Regulations are not confined to the latter foundations. For example, I pointed out that the Carnegie Corporation of New York had violated Treasury Regulations by failing to make full disclosure of its capital gains for the years 1962 and 1963. I asked Mr. Caplin to confirm or deny that the Foundation had failed to furnish such details to the IRS. By letter of August 4, 1964, you informed me as follows:

We have examined the capital gains schedules submitted by the Carnegie Corporation for 1962 and 1963 and find that complete information on gain or loss from sale of assets required by our instructions was not furnished.

Also, during Mr. Dillon's testimony of July 21, I queried him as to the amount of money spent overseas by all United States foundations during 1963. The Secretary did not have the answer at the time and has since informed us that the IRS records "Do not indicate the amounts spent by all United States foundations for international projects."

Have you found our studies useful in your work, Mr. Harding?

Mr. HARDING. Very useful, Mr. Chairman.

The CHAIRMAN. Secretary Dillon stated that 10,000 tax exempt organizations' tax returns were examined in fiscal year 1964. Were these examinations field audits or desk examinations?

Mr. HARDING. Mr. Chairman, we have examined the breakdown between field and what we call office examinations for 1964 and we find that of the total examined, 10,051 were examined by field agents; 211 were examined by office auditors, within the office.

The CHAIRMAN. Well, now, the field agents, do they go into offices of the foundations?

Mr. HARDING. Yes, sir. The field agents typically go into the place of business or residence of the taxpayer to examine his books and records.

The CHAIRMAN. How many foundations had field audits in 1964? I believe you said about 10,000?

Mr. HARDING. Those were total examinations of all exempt organizations, Mr. Chairman.

The CHAIRMAN. I have them confused. My question is about foundations. About how many?

Mr. HARDING. Yes, sir, we examined approximately 1,300 foundations in fiscal year 1964, all of which were field examinations.

The CHAIRMAN. And in the offices of the foundations?

Mr. HARDING. Yes, sir.

The CHAIRMAN. How many applications for tax exemption did the IRS approve in 1963?

Mr. HARDING. In fiscal year 1963, Mr. Chairman, I do not have the figure currently at hand. I can give you the figure on fiscal year 1964 if that will be satisfactory.

The CHAIRMAN. Well, for a definite period?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Fiscal year 1964—that will be all right. That is 12 months.

Mr. HARDING. I beg your pardon, my figure is for 1963. We approved 9,735 applications for exemption in calendar year 1963.

The CHAIRMAN. 9,735?

Mr. HARDING. Yes, sir.

The CHAIRMAN. If every American had a tax exempt foundation, where would the Federal, State, and local governments obtain funds for their operations?

Mr. HARDING. That is a rather speculative question, Mr. Chairman. I am probably not competent to answer it, but I would assume if every American taxpayer was an exempt organization, there would be no funds available at any of the levels for those operations.

The CHAIRMAN. Is there anything keeping them from doing it?

Mr. HARDING. Yes, sir, I think there is. There are requirements that the income from those sums be used for charitable, educational, or research purposes. I think that most taxpayers are not willing to dedicate their entire resources to those ends.

The CHAIRMAN. If all of them that were in a position to do so took advantage of the present laws, it would seriously interfere with our collection of adequate revenue to take care of the national defense and interest on the public debt and things like that, would it not?

Mr. HARDING. That may be true, Mr. Chairman.

The CHAIRMAN. Would you agree that the living need charity more than the dead?

Mr. HARDING. Yes, indeed, sir.

The CHAIRMAN. Under present law, foundations are not required to spend their principal (which includes capital gains and contributions received), is that correct?

Mr. HARDING. That is correct, sir.

The CHAIRMAN. It is a pretty liberal law, is it not, Mr. Harding?

Mr. HARDING. That is the law as I understand it, Mr. Chairman. I would not want to characterize it.

The CHAIRMAN. Do I understand correctly that the IRS rule of thumb is that—except for extraordinary circumstances—a foundation is required to spend 90 percent of its annual income (meaning div-



idends, interest, etc.) for the purpose for which it was granted tax exemption?

Mr. HARDING. No, sir, I know of no such rule as that. The rule as I understand it is merely that there must not be an unreasonable accumulation of that income and it becomes a factual question.

The CHAIRMAN. What is the rule of thumb? What percentage?

Mr. HARDING. I am sorry, Mr. Chairman, I do not know of a rule of thumb.

The CHAIRMAN. Well, you have to have something to go by, do you not? Is there a rule of any type that you go by?

Mr. HARDING. Not that I am aware of, sir.

The CHAIRMAN. I have always heard that 90 percent is your guideline. In fact, I believe we received that information in correspondence from you.

Mr. HARDING. Well, I just personally am not aware of that rule, Mr. Chairman. I shall attempt to find out if we do have a rule and supply it for the record for you, sir. I am not aware of a set percentage rule that would guide us in making a determination of unreasonable accumulation.

The CHAIRMAN. It disturbs me that you have been with the Bureau as long as you have—11 years—and you have no rule on this very important matter of how much may be spent and how much may be retained. How do you instruct your field men? Do you say it is all right if they just spend 50 percent or 75 percent for charity? What do you tell them?

Mr. HARDING. It is a factual question, Mr. Chairman. We have many factual questions, such as what is reasonable depreciation in the corporate area. These are not areas where we can draw hard and fast lines.

(The information submitted by the IRS, under date of September 25, 1964, follows:)

The Internal Revenue Service has established no "rule of thumb" on the percentage of an exempt foundation's annual income that must be spent for exempt purposes. The Service has neither a published position nor an internal guideline that attempts to equate the "unreasonable accumulation of income" provisions of section 504 of the Internal Revenue Code to a percentage figure since neither the language of the statute nor its legislative history would support the use of a percentage figure in determining whether, in a particular case, the accumulation of income is "unreasonable in amount or duration." The issue is inherently factual, as an examination of various court opinions on the matter demonstrates.<sup>1</sup>

In 1950, the Senate Finance Committee rejected a House provision which would, in effect, have taxed the accumulated income of certain exempt organizations. This provision was deleted from the House bill because the Senate Finance Committee believed it "too inflexible and as a result would seriously injure many worthwhile educational and charitable projects." (S. Rept. No. 2375, 81st Cong., 2nd Sess., 1950-2 Cum. Bull. 483, 508.) It was in the Conference Committee that the existing statutory provision regarding accumulations of income unreasonable in amount or duration was added.

<sup>1</sup> *Samuel Friedland Foundation v. U.S.*, 144 Fed. Supp. 74 (1956); *Erie Endowment v. U.S.*, 202 Fed. Supp. 580 (1961), affirmed 316 Fed. (2d) 151 (1963); *Stevens Bros. Foundation, Inc. v. Commr.*, 39 T.C. 93 (1962); *Danforth Foundation v. U.S.*, 222 Fed. Supp. 761 (1963); *Hulman Foundation, Inc. v. U.S.*, 217 Fed. Supp. 423 (1962); and *Frank F. Truscott, Dwight L. Morris and I. Lehr Brisbin, Trustees of Harry D. Hollway Foundation v. U.S.*, United States District Court for Pennsylvania Eastern District, entered April 1, 1958. [58-1 USTC para. 9515]

Thus, while the Service has published a series of interpretive rulings as to the mechanics of the statute,<sup>a</sup> its very nature precludes the use of a percentage test to determine compliance with the test of reasonableness of accumulations.

The CHAIRMAN. Our study indicates that the foundations under study by this Committee had accumulated income (meaning unspent income) of \$902 million at the close of 1960 as against \$271 million in 1951. Based on these figures, would you agree that, as of the close of 1960, those foundations with unspent income had kept \$902 million from the reach of the living who are in need of charity?

Mr. HARDING. They have not yet distributed it at any rate, Mr. Chairman.

The CHAIRMAN. In other words, they kept it from them. They just did not distribute it?

Mr. HARDING. Yes, sir.

The CHAIRMAN. According to Treasury figures, 62.7 million individuals filed income tax returns in 1962. The standard deduction form was used by 36.1 million of these individuals. Thus, there was no tax reduction incentive which moved these 36.1 million Americans to contribute to charity, is that correct?

Mr. HARDING. Yes, sir. I think that is a correct inference to draw.

The CHAIRMAN. According to figures compiled by the Treasury for 1961, persons with adjusted gross income of less than \$12,000 per year paid 61 percent of all income taxes in 1961. Is that your understanding?

Mr. HARDING. That sounds about right, yes, sir.

The CHAIRMAN. Charity has been called the fourth largest industry in the United States. It is estimated that \$9.3 billion was contributed to charity by the American public in 1962, as against \$5.4 billion in 1954, and, according to the IRS, foundations contributed only \$800 million of the \$9.3 billion in 1962.

Hence, it is obvious that by far the largest part of the charitable contributions in this country comes from middle and lower income groups—from people who contribute one dollar, two dollars, five dollars, or ten dollars to their cancer funds, community funds, March of Dimes, etc. These people give because of their sympathy for the poor, the ill, and the underprivileged, not because they receive any tax breaks.

During the period that we have been engaged in this study, we have heard a great deal from a few government officials and vested interests, such as foundation executives, who say that we must be careful not to "dry up" the sources of foundation philanthropy.

At this point, I should like to read to you portions of a letter dated July 13, 1964 which I received from Mr. C. Edward Johnson, Director of Public Relations and Finance of the Greater Minneapolis Council of Churches.

First of all I would like to commend you, your staff and your committee on the excellent work you are doing in noting the impact of tax-exempt foundations and charitable trusts on our economy. I have appreciated reading the three reports your committee has published.

<sup>a</sup> Rev. Rul. 54-137, C.B. 1954-1, 289; Rev. Rul. 55-674, C.B. 1955-2, 264; Rev. Rul. 54-227, C.B. 1954-1, 291; and Rev. Rul. 58-535, C.B. 1958-2, 270.

Personally, I find it difficult to be sympathetic with any group, organization or individual who abuses the privilege of giving. If you take the verb *to give* out of the concepts upon which our Nation was founded, if it were removed from the hopes we hold for democracy today, our history would reflect a most unhealthy and selfish background.

What has this to do with foundations? Just this: When these groups abuse the privilege and confidence placed in them, when they are allowed to create an atmosphere of generosity when it is not so, then they abuse freedom. It is at this point also that they must be held accountable. *To give means* "to bestow freely without return." Too many foundations are allowed to masquerade as givers when actually this is not the case.

If a foundation does *not* do the things for which it is established then, it seems to me, it automatically forfeits its right to exist and should be subject to strong action.

The CHAIRMAN. Would you agree that every taxpayer subsidizes gifts to foundations and, contrary to the principles of the income tax laws, the wealthy are subsidized more heavily than the poor?

Mr. HARDING. Mr. Chairman, I am afraid you are a little out of my depth as a tax administrator. I really do not think this is a position that the Revenue Service has an official stance on. I think, as Secretary Dillon pointed out in his testimony, a great deal of good is done by charitable foundations, and I think that this is probably about as far as I as an administrator and a career service officer ought to go in commenting on what is essentially a matter of tax policy.

The CHAIRMAN. Would you agree that gifts by the wealthy may not be purely unselfish donations since they can be a means of increasing the donor's spendable income?

Mr. HARDING. Mr. Chairman, I really do not know what motivates wealthy people to make gifts. Not being one myself, I am not in a position to see into their minds. I am afraid that I do not know the answer to your question.

The CHAIRMAN. I am just asking you, would you agree that gifts by the wealthy may not be purely unselfish donations?

Mr. HARDING. Yes, sir; I think that possibility exists.

The CHAIRMAN. How many gifts and bequests of \$1 million or more were there in 1962? What was their dollar value?

Mr. HARDING. I would have to supply that for you for the record, sir.

The CHAIRMAN. And do not forget the dollar value, too.

Mr. HARDING. Let me be sure we understand the question, Mr. Chairman.

The CHAIRMAN. How many gifts and bequests of \$1 million or more were there in 1962, and—

Mr. HARDING. Are these single, individual bequests?

The CHAIRMAN. That is right.

Mr. HARDING. I am afraid we may not have that information, Mr. Chairman. Our statistics of income which show charitable deductions are in terms of those reported on tax returns, which would be in gross only. We cannot tell whether that was a series of \$250,000 bequests, or whether it was a total of \$1 million.

The CHAIRMAN. Well, the best information you have.

Mr. HARDING. We shall give you the best information we have, Mr. Chairman.

(The information submitted by the IRS, under date of September 1, 1964, appears on page 206.)

The CHAIRMAN. Why should a person with income of \$100,000 a year be given a tax break for a charitable contribution when the person earning \$5,000 per year gets no such benefit?

Mr. HARDING. The law, sir, requires or allows the taxpayer to take charitable deductions. I presume in your \$5,000 category, you are referring to those people who take standard deductions. Of course, a \$5,000 person who itemizes is allowed a deduction for his charitable deduction.

The CHAIRMAN. Mr. Evins?

Mr. EVINS. I believe you said you have been with the IRS about 12 years?

Mr. HARDING. Eleven years, sir.

Mr. EVINS. When was the charitable foundations law first enacted by Congress?

Mr. HARDING. My understanding is that it goes back as early as 1909, before the income tax.

Mr. EVINS. How many amendments have been made to this law since it was originally enacted in 1909?

Mr. HARDING. My legal counsel informs me in the neighborhood of a half dozen, Mr. Evins. I am not familiar with it. I do know that major changes were last made in this law in 1950.

Mr. EVINS. Were these 1950 amendments the result of investigations and recommendations of the Internal Revenue Service?

Mr. HARDING. They were the result of recommendations made to the Congress by the Treasury Department, Mr. Evins.

Mr. EVINS. Over the years, have you had extensive experience and difficulties in administering this law?

Mr. HARDING. We have had extensive difficulties in administering this law, yes, sir.

Mr. EVINS. How many investigations are generally made annually with respect to the tax exempt foundations?

Mr. HARDING. Well, sir, during the most recent period, we are running at the rate of about 10,000 examinations a year. This is up considerably from prior years' experience.

Mr. EVINS. You are speaking of all exempt organizations—

Mr. HARDING. All exempt organizations.

Mr. EVINS. We are addressing our remarks, and this is why I specifically referred to it, to foundations. How many investigations do you make annually with respect to charitable exempt foundations?

Mr. HARDING. About 1,300 last year.

Mr. EVINS. How many charitable exempt foundations are there in existence?

Mr. HARDING. Depending upon definitions, and this is not a legally defined entity in the code, but somewhere in the neighborhood of 15,000.

Mr. EVINS. 15,000 tax exempt foundations, and you have made a spot check on perhaps 1,000?

Mr. HARDING. Yes, sir.

Mr. EVINS. So 49,000 went by the board and were not examined?

Mr. HARDING. No, sir. that would be 14,000.

Mr. EVINS. Oh, that is right, 14,000.

Mr. HARDING. That, Mr. Chairman, is probably about as high a ratio as we have in our total audit program throughout the country. We examine typically, nationwide, less than 5 percent of the returns filed.

Mr. EVINS. Have you made recommendations to the Congress of the need of additional personnel for making these investigations? Have you made recommendations for tightening up the law in this area, or is there really any great concern in the Department?

Mr. HARDING. We annually make recommendations for additional personnel for our total audit job, Mr. Evins.

Mr. EVINS. We are speaking about foundations.

Mr. HARDING. We have not made any specific request for personnel for the audit of foundations. We have informed the Congress, however, of our increased audit program in our entire exempt organization field. They are aware of this and this has been part of our justification.

Mr. EVINS. How many personnel in your organization are assigned specifically to the investigation of organizations in the charitable foundations field?

Mr. HARDING. I cannot give you that figure, Mr. Evins. We have dedicated in excess—

Mr. EVINS. How many personnel are assigned to foundation investigation work exclusively?

Mr. HARDING. I say I cannot give you that figure. Our programming in the National Office relates to total exempt organizations. In this area, we have assigned about what we call man years, and our figure is in excess of 100 man years in the exempt organization field.

Mr. EVINS. You have testified that you think there are about 15,000 tax exempt foundations, and I believe earlier, you testified you really do not know how many there are.

Mr. HARDING. I said our best estimate, Mr. Evins, is that there are in excess of 15,000. We are in the process now of developing a master file of exempt organizations on electronic tape for the purpose of keeping a continuing inventory on all exempt organizations. When this job is completed, we shall have a much more precise figure to give you on the number of foundations.

Mr. EVINS. Mr. Harding, since this law was first enacted in 1909, and in view of the enormous growth in numbers of charitable exempt foundations, and also the tremendous amount of funds involved, do you not think it is incumbent upon you to this field of possible tax avoidance?

Mr. HARDING. Mr. Evins, as Mr. Caplin pointed out in his testimony last month, there has been a rather sizable increase in our effort in the entire exempt organization field, and particularly in the foundation area since this Subcommittee has evidenced its interest in the matter and has made available to us the three reports we have received.

Mr. EVINS. Do you have any specific recommendations you wish to make to this Subcommittee at this time as a result of the previous reports that have been published?

Mr. HARDING. No, sir, our recommendations, such as they may be, are being made to the Treasury Department for the purpose of incorporation in their legislative proposals which they intend to bring to the Congress at the next session.

Mr. EVINS. There is a concern in the Congress, I think there is a national concern, about the national growth, and I think it is incumbent upon you as Commissioner to be more aggressive and active in this field. There is a general feeling that there has been a neglect or lack of concern, paying of little attention to it, anything that escapes by the board.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Evins is on the Appropriations Committee, and I am sure he will consider any request that you may make for addition personnel, additional money to go into this foundation area.

Mr. HARDING. We shall certainly take advantage of Mr. Evins' interest in this matter.

The CHAIRMAN. Since 1960, has the IRS examined foundation tax returns to determine whether compensation of officers, directors, or trustees may be exorbitant and unjustified?

Mr. HARDING. An examination of this sort, Mr. Chairman, would be involved in a typical examination of foundations, yes, sir.

The CHAIRMAN. You leave it generally up to the officers of the foundation as to the salaries they pay and the expenses they desire to pay, do you not?

Mr. HARDING. Yes, sir, generally.

The CHAIRMAN. Generally, you do?

Mr. HARDING. Yes, sir, as in the case of a corporation.

The CHAIRMAN. Since 1960, has the IRS found that compensation of officers, directors, or trustees among the large foundations is reasonable and justified?

Mr. HARDING. I know of no evidence to the contrary, Mr. Chairman.

The CHAIRMAN. Would you agree that there are numerous worthwhile charitable organizations in this country—such as the cancer funds, community funds, etc.—that are always in need of funds?

Mr. HARDING. Yes, sir.

The CHAIRMAN. With this in mind, I would like to give you a small sampling of the amounts paid to officers, directors or trustees of eleven foundations. These amounts represent payments made by nine foundations in 1963, and by two foundations in 1962 (the 1962 figures for the latter being the last year on file with the Subcommittee). Total payments made to such officials of the eleven foundations were \$3,393,322.74, as follows:

Lilly Endowment, Inc., Indianapolis	\$66,899.88
W. K. Kellogg Foundation, Battle Creek, Mich	166,412.00
Carnegie Corporation of New York (fiscal year ending 9/30/63)	254,083.00
Commonwealth Fund, N.Y.C. (fiscal year ending 6/30/63)	119,906.78
Duke Endowment, N.Y.C. and Charlotte, N.C.	559,713.77
Ford Foundation, N.Y.C. (fiscal year ending 9/30/63)	619,834.44
Rockefeller Brothers Fund, Inc., N.Y.C.	60,500.00
Rockefeller Foundation, N.Y.C.	1,032,702.01
Alfred P. Sloan Foundation, N.Y.C.	194,797.00
Leonard C. Hanna, Jr. Fund, Cleveland (fiscal year ending 8/31/62)	245,064.86
Robert A. Welch Foundation, Houston (fiscal year ending 8/31/62)	73,409.00

Total (eleven foundations) 3,393,322.74

Some of the officials devoted only part of their time to their positions. For example, payments to fourteen members of the Ford

Foundation's Board of Trustees totaled \$68,750 for their part time duties during that one year. Mr. John J. McCloy was paid \$30,000, plus \$120.85 travel expenses, for his part time work as Chairman of the Board and Trustee of the Ford Foundation. Mr. Donald K. David was paid \$25,000, plus \$5,000 conference and meeting expenses, for his part time duties as Vice Chairman and Trustee of the Ford Foundation.

Let us now have a further look at the payments to Ford Foundation trustees for three years 1960 through 1962. According to the Foundation, "All trustees receive an honorarium of \$5,000 per year." Based on that figure of \$5,000 per year, the aggregate compensation of eighteen trustees was \$225,000 for the years 1960 through 1962. Here is a run-down of (1) each trustee's compensation for that period, and (2) the number of days of meetings attended by each of them during that period. The data apply to Board of Trustees meetings, Executive Committee meetings, and Finance Committee meetings.

- Stephen D. Bechtel was paid \$10,000 for attending meetings on twenty days during 1961 through 1962.
- Eugene R. Black was paid \$15,000 for attending meetings on thirty-one days during 1960 through 1962.
- James B. Black was paid \$5,000 for attending meetings on nine days during 1960.
- James F. Brownlee was paid \$5,000 for attending meetings on twelve days during 1960.
- John Cowles was paid \$15,000 for attending meetings on twenty-seven days during 1960 through 1962.
- Donald K. David was paid \$15,000 for attending meetings on forty-three days during 1960 through 1962.
- Mark F. Ethridge was paid \$15,000 for attending meetings on twenty-two days during 1960 through 1962.
- Benson Ford was paid \$15,000 for attending meetings on three days during 1960 through 1962.
- Henry Ford II was paid \$15,000 for attending meetings on twelve days during 1960 through 1962.
- H. Rowan Gaither, Jr. was paid \$5,000 for attending meetings on nine days during 1960.
- Lawrence M. Gould was paid \$15,000 for attending meetings on twenty-three days during 1960 through 1962.
- Henry T. Heald was paid \$15,000 for attending meetings on fifty days during 1960 through 1962.
- Roy E. Larsen was paid \$15,000 for attending meetings on twenty-five days during 1960 through 1962.
- John J. McCloy was paid \$15,000 for attending meetings on thirty-seven days during 1960 through 1962.
- J. Irwin Miller was paid \$10,000 for attending meetings on ten days during 1961 through 1962.
- Julius A. Stratton was paid \$15,000 for attending meetings on twenty-three days during 1960 through 1962.
- Bethuel M. Webster was paid \$10,000 for attending meetings on twenty-four days during 1961 through 1962.
- Charles E. Wyzanski, Jr., was paid \$15,000 for attending meetings on twenty-eight days during 1960 through 1962.

At this point, in order to save time, I shall insert in the record, as Exhibits, the details of the payments made to each individual by the eleven foundations instead of reading them. (Exhibits 1 through 11, pages 297-311.) I shall give you a copy, Mr. Harding.

As you know, the Leonard C. Hanna, Jr. Fund of Cleveland has been liquidated and a tax return was filed for the final liquidation period of September 1, 1962 through January 18, 1963. Has the IRS found that the Fund has complied with all statutory requirements?

Mr. HARDING. I shall have to have that checked for you, Mr. Chairman. Off hand, I do not know.

The CHAIRMAN. And you will put your answer in the record?

Mr. HARDING. Yes, sir, I shall put the answer in the record.

(The information submitted by the IRS, under dates of October 2, 1964 and October 26, 1964, appears on page 207. Also see Exhibits 6 and 12, pages 302 and 312.)

The CHAIRMAN. Although the Hanna Fund filed a tax return for the final liquidation period, it failed to report details of compensation of officers and trustees. Such details, which are required by Treasury regulations, include the name of the officer or trustee, position, time devoted to position, salary, and expense account allowance.

We have made three requests to the Fund for such details, the first one dated January 25, 1964.

The tax return for the period of September 1, 1962 through January 18, 1963 indicates that \$103,395 was paid to officers and trustees during this short period of 4½ months.

During the five year, four and one-half month period (fiscal years ending August 31, 1958 through January 18, 1963) the four trustees of the Hanna Fund—John C. Virden, Harold T. Clark, Lewis B. Williams, and H. J. Reigert—received \$712,986.95 as compensation for their part time duties.

At this time, I would like to have you instruct one of your aides to phone the Cleveland District Office and ask them to obtain from the Hanna Fund for purposes of this record, the required information respecting payments to the individual officers and trustees during the period of September 1, 1962 through January 18, 1963. Would you do that, please, sir?

Mr. HARDING. Just one second, please, Mr. Chairman.

This would be the information, Mr. Chairman, that should have been on their Form 990-A—

The CHAIRMAN. Yes, sir, and which was not.

Mr. HARDING (continuing). For the period ending what, again, sir?

The CHAIRMAN. January 18, 1963.

Mr. HARDING. I shall see if we can get that information for you.

The CHAIRMAN. That was their liquidation period.

Mr. HARDING. Mr. Chairman, if we are unsuccessful in getting that information for you before the conclusion of this hearing, would it be satisfactory, if it is available, for it to be inserted in the record?

The CHAIRMAN. Yes, sir, but we shall be in session this afternoon I think, and during that period of time, you could probably get it.

Mr. HARDING. We shall do our very best, Mr. Chairman. But sometimes you cannot contact the responsible officers and you are not able to get the information.



The CHAIRMAN. That is right. But do it if you can.

(The information submitted by the IRS under date of August 11, 1964, appears on page 157. Also, see Exhibits 6 and 12, pages 302 and 312.

The CHAIRMAN. In your view, what is the justification for payments as large as those made by the aforementioned eleven foundations—considering the pressing needs of many charitable organizations?

Mr. HARDING. Mr. Chairman, the matter of reasonable compensation of executives of any sort is a very difficult problem. As you were going through this list, with particular reference to the individual payments to some of these gentlemen, some of whose names are familiar to all of us, I recognize that they seemed to be compensated in terms of their time at board meetings at the rate of about \$500 a day. Now, from our dealings with attorneys, with management consulting firms, and with other professional groups, this is not an unreasonable rate of compensation in the highly professional areas.

The CHAIRMAN. But this is for charity.

Mr. HARDING. Yes, sir; I grant you this is for charity. I think the position we have to take, however, is that these people do demand these prices in their every day world, and they are being compensated by these foundations for their expert advice. I am sure that the foundations would argue the case that their contributions to the foundations, in terms of their expertise, more than compensate for the rate of daily pay.

The CHAIRMAN. I notice one of the last ones I read was that Benson Ford was paid \$15,000 for attending meetings on three days during 1960 through 1962, and Mr. Henry Ford, II was paid \$15,000 for attending meetings on 12 days during 1960 through 1962. Since this is supposedly for charity, it seems a little unusual to me that we would have such huge amounts for service. Of course, I am not as familiar with it as you are, and I do not pretend to be an expert on it.

Mr. HARDING. My only explanation is that these gentlemen are being compensated for their expertise in the direction of the charitable activities, and it has been the decision of the board of directors that this is a reasonable compensation.

Mr. HARVEY. Mr. Chairman?

The CHAIRMAN. Yes, sir, Mr. Harvey.

Mr. HARVEY. I note here that one of the 11 that has been included is the Lilly Endowment from Indianapolis. I followed through the figures as to the salaries that were paid in the case of this particular foundation. It is one with which I have some personal acquaintance and knowledge. I notice in this case that the chief executive official of the foundation is paid \$30,000. Now, I happen to know Mr. Lynn and I know the work of the foundation. I just want to say in the instance of this particular foundation that I do not think, knowing the competency and the responsible duties that Mr. Lynn has, that I would consider his salary an excessive one at all.

There are many people within the Lilly organization who contribute a great deal of their time and of their talents without cost to the foundation in an effort to make the operation of the foundation as efficient and as effective as possible.

Mr. Chairman, again, I do not want to belabor the issue, because in some instances I think the statement here has brought to light the pay-

ments to employees which, even considering their expert advice and judgment, would seem to be very liberal. But I did want to comment in this instance, particularly with regard to the one foundation from my own state, one with which I have knowledge, and to say again that I think that this is a foundation that has not only followed the letter but the spirit of the law as well.

The CHAIRMAN. Thank you, Mr. Harvey. We are glad to have your comments for the record.

What is the purpose of requiring foundations to report details of compensation paid to officers, directors, trustees, etc., Mr. Harding?

Mr. HARDING. Primarily, Mr. Chairman, we are attempting to determine that the activities of the foundation are for charitable purposes, and our reasons would be to examine into payments made to directors and officers to be certain that this is not a subterfuge for compensation of these people at unreasonable rates.

The CHAIRMAN. Does this salary reporting have anything to do with making it possible for the IRS to determine whether salaries of such persons are reasonable?

Mr. HARDING. Yes, sir.

The CHAIRMAN. If such is the case, why do you omit salaries of persons who are not officers? For example, the Longwood Foundation of Wilmington, Delaware (a du Pont foundation) paid out salaries and wages totaling \$1,178,755.16 during fiscal year ending September 30, 1963. Of this amount, \$86,409.84 was paid to five non-officers each of whom received \$10,000 or more. Details of such payments are being inserted in the record herewith.

(The information referred to is as follows:)

*Longwood Foundation, Inc., Wilmington, Del.—Compensation of employees receiving \$10,000 or more*

[Fiscal year ending September 30, 1963]

Name and address	Position	Salary received	Expenses received
Russell J. Seibert, Longwood Gardens, Kennett Square, Pa.	Director, Longwood Gardens.	\$24, 000	\$1, 978. 11
Everitt L. Miller, Longwood Gardens, Kennett Square, Pa.	Assistant Director---	17, 300	487. 63
George E. Thompson, 8 Green Tree Drive, West Chester, Pa.	Business Administrator.	16, 320	44. 10
Knowles R. Bowen, Ridgescote Lane, Kennett Square, Pa.	Superintendent of Maintenance.	15, 480	-----
John M. Johnson, R.D. 2, Kennett Square, Pa.	Chief Horticulturist--	10, 800	-----
Total-----	-----	83, 900	2, 509. 84

Mr. HARDING. Mr. Chairman, the reason that we do not require the complete salary schedule on the return is that it would, in many cases, make the return entirely too clumsy; and therefore, we, as in the case of taxable corporations, do not require that they be submitted with the 990-A because of this difficulty of paper processing.

The CHAIRMAN. I would like to get on with the J. M. Kaplan Fund, Inc., of New York City. First I shall give you a few statistics on its

gross receipts and disbursements, and then I shall present a summary of the matter before asking you some questions about the Fund.

Do you have your file here yet, Mr. Harding?

Mr. HARDING. No, sir.

The CHAIRMAN. Gross receipts of the J. M. Kaplan Fund totaled \$19.3 million for the years 1951 through the year 1963, including \$2.5 million contributions received and \$11.9 million capital gains. Contributions paid out totaled \$6 million.

I shall ask Mr. Olsher to continue.

Mr. OLSHER. The J.M. Kaplan Fund, Inc., of New York City, was organized on October 6, 1944 under the laws of the State of Delaware.

By letter of October 11, 1944, the J. M. Kaplan Fund asked the Commissioner of Internal Revenue, Washington, D.C., for a ruling as to whether the Fund would be eligible for tax exemption based on the facts set forth in its application of October 6, 1944. The Fund's reason for requesting a ruling was:

Before the undersigned can commence functioning through having contributions made to it, it is important to ascertain, to the extent possible, that it complies with the tax exemption requirements of Section 101 (6) and the requirements for deductibility of contributions contained in Section 23 (o) and Section 23 (q) of the Internal Revenue Code.

By letter of November 30, 1944, Mr. Norman D. Cann, Deputy Commissioner of Internal Revenue, advised the J. M. Kaplan Fund as follows:

It is the opinion of this office, based upon the evidence presented, that if you are operated strictly in accordance with the stated purposes, you will be entitled to exemption from Federal income tax under the provisions of Section 101 (6) of the Internal Revenue Code as an organization organized and operated exclusively for charitable purposes.

Accordingly, you will not be required to file income tax returns unless you change your character or the purposes for which you were organized, engage in any activities not contemplated by your stated purposes, or attempt to influence legislation.

Contributions made to you will be deductible by the donors in arriving at their taxable net income in the manner and to the extent provided by Section 23 (o) and (q) of the Internal Revenue Code.

Since the actual activities of an organization are a material factor in determining whether or not it is organized and operated in accordance with the several provisions of law referred to herein, you should, after your first complete year of operation, complete and file with the Commissioner of Internal Revenue for your District, Form 1023, in order that the effect of your actual operations upon your exemption status may be determined.

The Kaplan Fund filed an application for tax exemption on May 15, 1946. Income tax exemption was granted to the Fund as a charitable and educational organization by Commissioner's letter dated June 6, 1946.

Assets as of December 31, 1945, totaled \$1,624,277. Assets as of December 31, 1963, was valued at \$14.7 million.

By letter of March 29, 1957, Mr. Donald R. Moysey, District Director of Lower Manhattan advised the Kaplan Fund that his office had made an examination of its activities, as disclosed by its tax returns for the years 1947 and 1949 through 1955, and "a detailed examination of the books, minutes, correspondence and other related data for the year 1953." On the basis of the facts developed, it was the opinion of the District Office that a substantial basis existed for the revocation of the Fund's tax exemption for the following reasons:

(1) The J. M. Kaplan Fund, Inc., was not organized and operated exclusively for charitable, religious, educational or other exempt purposes within the meaning of section 101 (6) of the 1939 Code (sections 501 (c) (3) of the 1954 Code), but was availed by the creator for self-motivating interests.

(2) The J. M. Kaplan Fund, Inc., from its inception had borrowed considerable sums of money from organizations owned or controlled by the creator for the purpose of carrying on a trade or business, namely, that of an investment and/or trading enterprise, rather than those activities usually associated with exempt organizations.

(3) The J. M. Kaplan Fund, Inc., in violation of section 3813 of the 1939 Code (corresponding to section 503 of the 1954 Code) engaged in prohibited transactions in 1953 and 1954 within the meaning of the Code.

(4) The J. M. Kaplan Fund, Inc., on an overall basis, was never intended to be, from its inception, availed of for purely charitable, educational or other exempt purposes, and in practice operated as the alter ego of Mr. J. M. Kaplan.

Accordingly, it was the considered opinion of the District Office that the exempt status of the J. M. Kaplan Fund, Inc., under the provisions of section 101 (6) of the 1939 Code and section 501 (c) (3) of the 1954 Code, should be revoked, retroactively and prospectively.

Under established procedure the District Office would recommend to the Commissioner of Internal Revenue, Washington 25, D.C., that the Fund's exemption be revoked.

If the Fund did not agree with the foregoing conclusions, it could, within 30 days from March 29, 1957, file a protest.

Additional observations and conclusions of the District Office were as follows:

(1) A review of the facts shows that the J. M. Kaplan Fund, Inc., has not been operating exclusively within the specified purposes of the section 501 (c) (3) of the 1954 Code, but was operating in the manner of an ordinary investment enterprise.

(2) It was the opinion of the District Office that an organization is not entitled to exemption where its security transactions and portfolio changes are of the nature and of sufficient frequency to indicate that the organization is not being operated for the purpose of acquiring property for bona-fide investment purposes to be held in good faith for the production of investment income. This is particularly true when:

- (a) The bulk of the transactions are short term.
- (b) A substantial part of the investment in stocks are purchased anticipating capital gains, rather than for dividend income; and the above are coupled with:
- (c) Extensive borrowings of funds for the purpose of entering into speculative transactions; thereby
- (d) Jeopardizing the carrying out of the charitable, educational, or other purpose or function constituting the basis for exemption.

(3) The J. M. Kaplan Fund, Inc., was clearly competing with others in the market place, and since the business was speculative the whole of the principal and profits could be wiped out. An organization, such as this one, which over the years engages in trade, business, or speculation, clearly does not come within the terms of the statute granting exemption from Federal income taxes.

(4) In 1953 the Fund showed a capital gain of \$402,184.83. The gain was primarily attributable to the sale of 113,901 shares of Pittsburgh Steel Co., which was acquired in 1951 from corporations controlled by the creator of the Fund. The Fund had invested in securities as at December 31, 1951, \$2,600,258.71, of which amount \$1,773,070.26 or approximately 70% of the portfolio was invested in Pittsburgh Steel.

The cashbook of the Fund for the month of April, 1953 disclosed that \$26,149.39 was paid to various attorneys for the purpose of conducting an investigation of the affairs of Pittsburgh Steel, because it was stated that the management of said company had been mismanaging its affairs to the detriment of the stockholders.

It was clearly evident that the investment in Pittsburgh Steel was made primarily for purposes of capital appreciation rather than for investment in income-providing property to be used for purposes specified in the exempting statutes.

(5) As at January 1, 1955 the Fund had invested \$2,917,433.05. As at December 31, 1955 the Fund had invested \$9,631,553.96, showing an increase in investments of \$6,714,120.91.

The increase in the portfolio was primarily attributable to an increase in, and use of, borrowed funds amounting to \$6,337,034.11, and to a lesser extent to capital gains and cash reserves.

Forty-five securities were sold within one year of acquisition. Of this amount thirty-one were acquired in 1955. Fifteen were sold within one month or less from the date of acquisition. Of the balance of securities acquired in 1955, sixteen were sold within six months of acquisition. In one case, involving the purchase and sale of 3,900 shares A. G. Spalding Brothers stock (purchased April 29, 1955 for \$75,019.22 and sold April 14, 1955 for \$86,274.29), the Fund consummated a short sale for a gain of \$11,255.07.

Mr. ROOSEVELT. I think there is a little correction there. You said the stock was purchased at \$75,019.22—

Mr. OLSHER. It was a short sale.

Mr. ROOSEVELT. I take it, it should be noted that that was a short sale.

The CHAIRMAN. The reporter is getting this, so that will cover it.

Mr. OLSHER (continuing).—

(6) In 1953, the Kaplan Fund advanced \$400,000 to the Etched Products Corporation. The advances were secured by a second mortgage on realty and a chattel mortgage upon all the machinery, equipment, furniture and fixtures of Etched Products Corporation, together with any replacements, improvements, and subsequent acquisitions.

Title to the stock of Etched Products Corporation, at the time the advances were made, was in Estate of Alfred Nierenberg, Theodore D. Nierenberg (nephew of J.M. Kaplan), Felice T. Schwartz (niece of J. M. Kaplan), and others. In fact, the real incidents of ownership (directly or indirectly, as set forth in correspondence submitted to the examining officer) were in these persons plus Rose Nierenberg (sister of J. M. Kaplan) who had a one-third interest in the Estate of Alfred Nierenberg.

After the death of Alfred Nierenberg, his son, Theodore Nierenberg, took over the active management of Etched Products. At the time the advance of \$400,000 was made Etched Products had considerable liabilities.

In order to "bail out" the indebtedness of Etched Products Mr. Kaplan caused the Fund to advance monies to Etched Products Corporation to repay the loans and to relieve the company of financial pressures. As aforesaid these monies were secured by a consolidated second mortgage on real estate and chattel mortgages on the equipment. Mr. Kaplan also personally guaranteed the obligation of Etched Products to the Fund.

No interest was paid by Etched Products Corporation on its indebtedness for the period beginning December 17, 1953 and ending February 23, 1954.

On February 23, 1954 an agreement was entered into between the Electro-Chemical Engraving Company and Theodore Nierenberg, individually and as executor of the Estate of Albert Nierenberg, and Felice T. Schwartz, whereby Electro-Chemical Engraving Company purchased their interest in Etched Products Corporation. The price agreed upon was \$800,000, \$317,330.94 of which was paid to the Estate on transfer of the indebtedness and the balance to the stockholders (including shares held by the Estate). The debt of \$317,330.94 became owing to Electro-Chemical Engraving Company. There were also other considerations.

The initial transaction in December of 1953 (the loan of \$400,000 to Etched Products Corporation) was questionable because of the financial condition of Etched Products, the relationship of the parties, the failure to pay interest on the loan, the proviso for waiver of interest, and the nature of the security behind the loan. The interests of the Kaplan Fund were further diminished by virtue of the agreement of February 23, 1954.

It would appear that the entire Etched Products Corporation transaction was an integral part of Mr. Kaplan's effort to provide for his sister's and nephew's and Niece's welfare when he became apprised of the financial condition of Etched Products Corporation.

On the basis of the facts surrounding the advances of \$400,000 made by the Fund to Etched Products Corporation, it was the opinion of the District Office that the transaction constituted a "prohibited transaction" within the meaning of section 3813 (b) (1) of the Code which states in part as follows:

For the purposes of this section, the term prohibited transaction means any transaction in which an organization subject to the provisions of this section—(1) Lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to . . . a member of the family (as defined in section 24(b) (2) (D) of an individual who is the creator of—or who has made a substantial contribution to such organization . . .

The family of an individual shall include only his brothers and sisters, (whether by the whole or half-blood), spouse, ancestors, and lineal descendants.

Rose Nierenberg was a sister of J. M. Kaplan.

The provisions of section 3813 were violated by reason of the lending of monies to the Etched Products Corporation which was financially foundering and by the taking of security (chattel and real mortgages) of questionable value. This was further evidenced by the agreement of February 23, 1954, wherein the security was released and the \$400,000 indebtedness became subordinated to the trade and bank creditors of the borrowing corporation, Etched Products Corporation.

Here is a chronological account of the IRS—J. M. Kaplan Fund tax matter subsequent to March 29, 1957:

- By letter of April 25, 1957—The Kaplan Fund requested a sixty day extension, until June 29, 1957, for the filing of a protest. The reason given for requesting the extension was that Mr. J. M. Kaplan was out of the country and would not return until April 29, 1957.

- By letter of April 25, 1957—Mr. Donald R. Moysey, District Director of the Lower Manhattan District, granted an extension until June 29, 1957.

- By letter of June 20, 1957—The Kaplan Fund requested an additional extension of thirty days, until July 29, 1957. The reason given for requesting this extension was that Mr. J. M. Kaplan "returned to New York toward the end of April and then left again about the middle of May, to be gone until the middle of July."

- By letter of June 24, 1957—Mr. Raphael Meisels, District Director of the Lower Manhattan District, granted an extension to July 29, 1957.

- By letter of July 26, 1957—The Kaplan Fund's attorney requested a final extension of ten days, until August 8, 1957. The written request was made "in accordance with Mr. Alexander's suggestion to confirm today's telephone conversation" respecting a final extension. The letter does not give the reasons for requesting this extension.

- By letter of July 31, 1957—Mr. Raphael Meisels, District Director of the Lower Manhattan District, granted an extension to August 8, 1957.

- By letter of August 7, 1957—The Kaplan Fund's attorney filed a protest with Mr. Raphael Meisels, District Director of the Lower Manhattan District.

- By letter of January 7, 1958—Mr. Raphael Meisels, District Director of the Lower Manhattan District, advised the Kaplan Fund that his office had given careful consideration to the Fund's brief and had made "a thorough review of the issues involved". Thus, after careful consideration, the District Office agreed with the March 29, 1957 recommendations of Mr. Donald R. Moysey, which would revoke the Fund's tax exemption "retroactively and prospectively," and hence "the case file has been forwarded to the Commissioner of Internal Revenue, Washington 25, D.C., for final disposition."

- A letter from the Kaplan Fund's attorney to the Commissioner of Internal Revenue, Washington, D.C., dated November 20, 1958, refers to a conference held on July 8, 1958, at which time additional information was requested by the IRS.

- By letter of October 9, 1958—The Kaplan Fund's attorney confirmed the "oral arrangement extending until November 17, 1958, the time for furnishing the additional information" requested by the IRS in the conference of July 8, 1958.

- By letter of November 20, 1958—The Kaplan Fund's attorney submitted to the IRS the additional information requested at the conference of July 8, 1958. The Fund also requested a further conference.

- By letter of April 24, 1959—Mr. Raphael Meisels, District Director of the Lower Manhattan District, requested that the Kaplan Fund execute and return within five days a consent Form 872, extending the statutory period of limitation upon assessment of tax for the years 1954 and 1955.

- By letter of May 1, 1959—The Kaplan Fund's attorney forwarded to the District Director of Lower Manhattan waivers on Form 872, extending the statute of limitations to June 30, 1960 for the years 1954 and 1955.

- By letter of March 24, 1960—Mr. Kenneth W. Moe, District Director of the Lower Manhattan District, overrode Mr. Moysey's recommendations of March 29, 1957, and advised the Kaplan Fund that its tax returns for the years 1952 through 1956 "will be accepted as filed." Hence the Fund "was exempt from Federal income taxes for such years."

- By letter of June 6, 1961—The Kaplan Fund's attorney advised the District Director of Lower Manhattan that "in accordance with prior discussion" it was enclosing additional memoranda respecting the Fund's tax returns for the years 1957 through 1960. Such memoranda covered accounts with Jemkap, Inc., J. M. Kaplan and Trust for J. M. Kaplan children, Baldwin Securities Corp., Publicker Industries, Inc., Elkay Investments, letter dated May 16, 1961 from Berlack, Israels, & Liberman, re fees paid to it by the Fund, and investments in Endicott Johnson Corp.

- By letter of August 31, 1961—The Kaplan Fund's attorney advised the District Director of Lower Manhattan that "in accordance



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with prior discussion" he was enclosing a memorandum respecting its investment in stock of Endicott Johnson Corp. The attorney requested an "opportunity to be heard in Washington in connection with consideration of this matter before any conclusions are reached," and stated that powers of attorney would be forwarded within a few days.

- By letter of September 6, 1961—The Kaplan Fund's attorney forwarded to the District Director of Lower Manhattan copies of power of attorney respecting the Fund's tax returns for the years 1957 through 1960.

- By letter of April 12, 1962—The Kaplan Fund's attorney advised the District Director of Lower Manhattan that "in accordance with our telephone conversation" he was enclosing "Memorandum Supplemental to Protest" filed with the Commissioner of Internal Revenue on November 20, 1958.

- By letter of April 24, 1962—The Kaplan Fund's attorney forwarded to the District Director of Lower Manhattan consent Form 872, extending to June 30, 1963 the period of limitations for assessment of the Fund for the year 1958.

- By letter of July 26, 1962—The Kaplan Fund's attorney advised Mr. Harold Brodsky (Conference Coordinator Staff, Office of the District Director of Lower Manhattan), that "in accordance with our conversation" he was enclosing another memorandum, respecting the Fund's tax returns for the years 1957 through 1960, and requested that a copy of his "letter and said memorandum be forwarded to the appropriate branch of the National Office," to be associated with the Fund's file. The Attorney also reiterated his "request for a hearing in the National Office before any conclusions are reached."

- By letters of January 22, 1964 and July 28, 1964—The Kaplan Fund's attorney advised Rep. Wright Patman that there have been no conferences or hearings with the Internal Revenue Service since July 26, 1962 with respect to the matters referred to in the IRS July 26, 1962 memorandum or any other matters of the J. M. Kaplan Fund, Inc. Nor have any taxes been assessed by the IRS.

- By letter of February 19, 1964—The Fund's attorney forwarded to the IRS Forms 872, extending the statute of limitations to June 30, 1965 for taxable years 1958 through 1960.

J. M. KAPLAN—J. M. KAPLAN FUND, FAMILIAR FIGURES IN THE  
SO-CALLED "TAKE-OVER" BUSINESS

Mr. J. M. Kaplan, founder of the J. M. Kaplan Fund, Inc., follows a familiar pattern for gaining control of companies. Mr. Kaplan, formerly President of Welch Grape Juice Company and of Southwestern Sugar and Molasses Company, and once in control of Hearn's Department Stores and other companies, is well known in the so-called "take-over" business. He has waged a number of battles in this field. In some of these contests, he has made use of charitable funds set up and dominated by him. Such funds, of course, enjoy the advantage of tax exemption.

Since 1945, Mr. Kaplan has been in and out of the following companies: Welch Grape Juice Company, Southwestern Sugar and Molasses Company, Pittsburgh Steel Company, Sharon Steel Company, Endicott Johnson Corporation, and Minnesota & Ontario Paper Company.

In addition, Mr. Kaplan and the funds of which he is a trustee or officer, hold 19 percent of the voting stock of Lee National Corporation and 31 percent of the voting stock of Illinois Brick Company.

In the 20 years since he won control of Welch Grape Juice Company in a proxy contest, Mr. Kaplan's pattern of seeking control of companies has been pretty much the same in every situation:

- accumulation of stock in the company, usually through purchases by himself and the tax-exempt foundations he has set up and serves as trustee;
- notification to the company of his holdings;
- a request for membership on the board of directors, or for adoption of policies he favors;
- disposition of his holdings, frequently, at a handsome profit—much of it tax-exempt.

This course of conduct has brought him editorial condemnation by newspapers and by such nationally-known financial commentators as Leslie Gould, financial editor of The New York Journal American, and J. A. Livingston, financial editor of The Philadelphia Evening Bulletin, for his use of tax-exempt foundations.

After organizing or heading a number of molasses companies from 1920 to 1925, Mr. Kaplan became president of J. M. Kaplan & Brothers, Inc., in 1926 and has been president of Kaplan Holding Company and various successors since 1930. He was president and chairman of Hearn Department Stores, Inc. 1932-1936; American Dry Ice Corporation, 1933-34; Molasses Products Corporation 1934; president of National Grape Corporation 1934-1945.

Upon winning his proxy fight for control of Welch Grape Juice Company, Mr. Kaplan served as President and Director from 1945 to 1956. On August 25, 1955, the Navajo Corporation (100 percent owned by the Kaplan Fund) sold to the Fund 244,681 shares of capital stock of Old Welch Company, or 61 percent of the outstanding shares, for \$5,138,483.00. At present, we have no information as to how the Navajo Corporation acquired the shares. On December 10, 1956, the Fund disposed of the 244,681 shares for \$15,781,924.50, showing a gain of \$10,643,441.50.

Mr. Kaplan was President of Southwestern Sugar and Molasses Company from June, 1959 to March 1963.

According to Poor's Directory of Directors for 1964, Mr. J. M. Kaplan had the following business affiliations:

- President & Director, Nivell Corporation
- President & Director, Jemkap, Inc.
- President & Director, Southwestern Sugar & Molasses Co.
- President & Director, Ronier Corporation

A case-by-case study shows the pattern of Mr. Kaplan's business activities since 1945.

CASE NO. 1—LEE NATIONAL CORPORATION (FORMERLY LEE RUBBER & TIRE COMPANY)

As of March, 1964, foundations and funds, of which Mr. J. M. Kaplan was an officer, held 149,000 of the 785,000 shares of Lee National Corporation outstanding stock, or about 19 percent.

The J. M. Kaplan Fund, Inc., of which Mr. Kaplan is president, Treasurer, and a Director, owned 77,000 shares, or 9.78 percent.

Jemkap, Inc., of which Mr. Kaplan is President, owned 26,500 shares.

Faigel Leah Foundation, Inc., of which Mr. Kaplan is President, owned 5,000 shares.

Mr. J. M. Kaplan, as Trustee, owned 37,500 shares.

Nemitco, Inc., owned 3,100 shares.

At Lee's annual meeting February 20, 1964, it was stated that Mr. Kaplan had sought membership on the board of directors on the basis of the stockholdings described above. When the management slate of directors was nominated, representatives of Mr. Kaplan placed in nomination six opposition candidates. The Wall Street Journal of February 21, 1964, reported that the group headed by J. M. Kaplan arrived at the meeting with 128,410 shares of Lee's outstanding shares. The stockholders, rebuffed him and his minority group in their attempt to place six members on the nine-man board of directors.

CASE NO. 2—ILLINOIS BRICK COMPANY

As of April 15, 1963, Mr. J. M. Kaplan had acquired a 10-percent stock interest in the Illinois Brick Company.

At January 22, 1964, Mr. Kaplan owned or controlled 63,391 shares of the 204,665 outstanding shares, or 31 percent of the company's stock.

The proxy statement of the Illinois Brick Company for the annual shareholders meeting of April 20, 1964, indicates that the shares controlled by Mr. Kaplan includes indirect ownership of 44,691 shares owned by Jemkap, Inc.; 8,800 shares in a family trust, of which Mr. Kaplan is Trustee, but in which he has no beneficial interest; 9,900 shares owned by a charitable corporation, of which Mr. Kaplan is a Trustee, but in which he has no beneficial interest.

Mr. Kaplan was elected a Director of the Company.

CASE NO. 3—MINNESOTA & ONTARIO PAPER COMPANY

Mr. J. M. Kaplan reportedly accumulated approximately 134,000 shares of the stock of Minnesota & Ontario Paper Company over a period of time beginning 1956. Total shares outstanding were 2,573,448 shares.

Mr. Kaplan reportedly advocated a policy line rejected by the management, and could not reach a position where he could ask for membership on the Board of Directors.

CASES NOS. 4 AND 5—PITTSBURGH STEEL COMPANY AND SHARON STEEL COMPANY

As reported by Leslie Gould, Financial Editor of the New York Journal American, January 6, 1961:

In his bid to become a steel tycoon, Kaplan first bought into Pittsburgh Steel Co., which, like Endicott Johnson, is largely a family run affair. The company then was dominated by J. H. Hillman, Jr., and his family.

Kaplan, as in Endicott Johnson, demanded and got a place on the Pittsburgh board. Hillman instead of giving battle to Kaplan did an adroit selling job. This was that since Hillman had 20 percent of Pittsburgh, maybe a more fertile field would be in Sharon Steel.

It just so happened that another Hillman enterprise—Pennsylvania Industries—had 64,000 shares, or 6½ percent, of the Sharon stock. The Hillmans might be persuaded to swap the Sharon stock for Kaplan's holdings in Pittsburgh. Kaplan "bought" the deal. At the same time—Sharon bought Pittsburgh Steel's holdings in National Supply.

Kaplan demanded a place on the Sharon board, but after getting on he had several run-ins with the two Roemers—H. A., sr., and jr.—who were chairman and president and who with their families had 20 percent of the Sharon stock.

Kaplan never got any further in his move to gain control, so an arrangement was made for him to sell his holdings at virtually the price he had paid. This was done through a secondary distribution.

The Kaplan Fund held 102,458 shares and 110,902 shares of Pittsburgh Steel as of December 31, 1951 and December 31, 1952 respectively, at a cost of \$1,773,070.26. In 1953 (date unknown), the Fund sold 113,901 shares of Pittsburgh Steel for \$2,163,380.24, showing a gain of \$390,309.98.

During the period that the Kaplan Fund held Sharon Steel Corporation stock, the Fund apparently did quite well. 61,600 shares of such stock were purchased on December 18, 1950–October 17, 1951, at a cost of \$2,303,705.05 and were sold in late 1951 (date unknown) for \$2,527,780.99, showing a gain of \$224,075.94.

#### CASE NO. 6—ENDICOTT JOHNSON CORPORATION

In the attempt of Glen Alden to take over the Endicott Johnson Corporation, in 1961, two tax-exempt funds were involved, the J. M. Kaplan Fund, Inc., and the Albert A. List Foundation. Mr. Albert A. List was president of Glen Alden. Major holdings of Endicott Johnson, held by the Kaplan Fund, were swapped for Glen Alden shares.

At that time there were cryptic comments in journalistic and legislative circles on the ethics of using assets of tax exempt funds in a battle for the control of a business when the sole reason for granting tax exemption is charity.

Commenting on the Endicott Johnson case, J. A. Livingston, Financial Editor of The Evening Bulletin, Philadelphia, wrote on January 17, 1961:

Regardless of intent, the episode reveals in full nakedness how charitable foundations can be misused. A charitable trust, or foundation, is granted tax free status by Congress solely for a charitable purpose. Assets are not to be employed to enrich the donors, or founders or to aggrandize their economic power.

A person can build up a foundation by contributing, every year, part of his income. If the investments are well chosen, the fund may grow rapidly through capital appreciation. Only income must be disbursed.

The foundation's sponsor may be able to use the assets to buy control of companies. In so doing, he becomes an indirect beneficiary of the trust through the power it confers on him. He can install himself as president of a corporation so acquired. He can find jobs for friends, relatives and business associates. He can favor friends with business.

The deal in the Endicott Johnson case was the swap of 60,000 shares of Endicott Johnson for shares of Glen Alden. Of this block, 54,000 shares were held by the Kaplan Fund, for which it received 126,000 Glen Alden shares. 6,000 shares of Endicott Johnson were held by other Kaplan interests.

The swap was not announced publicly until well after Endicott Johnson shares started to move on the Stock Exchange.

Commenting on this, and related matters, in the New York Journal American, January 5, 1961, Leslie Gould, Financial Editor, noted that the deal (between Messrs. Kaplan and List), was made December 29 after negotiations of a week or ten days. He added:

Two days later—the 31st—Glen Alden mailed to Endicott Johnson stockholders an offer of \$30.50 a share, which was \$3 above the close for the stock December 30. The shoe company stockholders got the offer in the mail Monday—the second—or Tuesday—the third.

A question for the SEC is who supplied Glen Alden the Endicott Johnson stockholder list? Endicott Johnson's president says Kaplan did.

Another question is did anyone connected with Endicott Johnson supply Glen Alden confidential information as to the shoe company, such as copies of an engineer report? Endicott Johnson's president says Kaplan did.

In line with the Stock Exchange's "hot news" requirements and the SEC's requirements as to disclosure when a proxy fight threatens, the movements in the market call for some explaining.

Endicott Johnson closed December 28 at \$24.62½, unchanged from the previous day. Volume was 2,300 shares. The next day—the date of Mr. Kaplan's deal—volume jumped to 4,600 and the price rose \$1.37½ to \$26. The next day—the 30th—volume was 4,400 with the day's close \$27.50, up \$1.50. It sold that day as high as \$28.

The first day of trading of the new year the stock jumped to \$31, up \$3.50 on a volume of 9,800 shares. The news was then out of the Glen Alden offer. The next day—the 4th—the stock touched \$31.12½ and closed at \$31.

The motive for buying Endicott Johnson shares for a charitable fund in the first place, when these shares were far from having a top investment rating, also came in for pungent comments.

Mr. Livingston's column of January 17, 1961, observed:

Kaplan has said that Endicott Johnson was a dying "company". Therefore, he wanted to bring in Glen Alden's management to revive it. That raises this question: Is it prudent and proper for a trustee of a foundation to invest charitable funds in a company which he thinks requires a managerial pulmotor? Isn't that taking a speculative risk which a trustee ought to avoid?

Reports of charitable trusts to the Treasury do not easily disclose how assets are being used. Information returns must be filed annually disclosing income, disbursements, and assets. However, unless the trust owns "10% or more of any class of stock of any corporation," it doesn't have to disclose the name of the company. If a large taxpayer sets up several trusts himself or through relatives, he could, without disclosure, easily control companies by confining holdings in each trust to less than 10% of a company's stock.

Mr. Kaplan was openly accused by Francis A. Johnson, Endicott Johnson president, in a letter to stockholders, of providing Glen Alden with confidential board information over an extended period, of negotiating a separate deal for himself apart from that offered other stockholders and of supplying a copy of the stockholders list to Glen Alden in violation of his stated purpose in asking for the list merely to get acquainted with the names of stockholders.

Messrs. Kaplan and List were also accused of entering into a conspiracy to gain control of Endicott Johnson. They denied this charge but on January 13, 1961, Justice Joseph Molinari, of the State Supreme Court, Binghamton, New York, issued an order restraining Glen Alden and List from acquiring additional Endicott Johnson shares.

#### VIOLATIONS OF TREASURY REGULATIONS

The Kaplan Fund does not issue an independent auditor's financial statement. In Chairman Patman's report to the Subcommittee (October 16, 1963, page 9), there is reference to the fact that the IRS performed an audit of the Kaplan Fund in 1957. Yet later, when the Fund filed its tax returns for the years 1957 and 1960, it failed to file the required schedules disclosing its ownership of 10% or more stock of a corporation. Nor did the Fund file such information for the earlier years 1954 through 1956. (Also, see First Installment of Chairman Patman's report to the subcommittee, dated December 31, 1962, pages 42 and 81, for other references to the Kaplan Fund.)

The CHAIRMAN. Would you agree that Mr. Kaplan has used the Fund to accumulate substantial stock ownership in certain companies?

Mr. HARDING. It would appear that the ownership has increased materially, Mr. Chairman.

The CHAIRMAN. Would you agree that there was substantial borrowing between Mr. Kaplan and his Fund?

Mr. HARDING. It would also appear that there was, yes, sir.

The CHAIRMAN. Since these loans bore no interest, had no collateral and maturity on the death of Mr. Kaplan, would you say that these were prudent loans for the Fund?

Mr. HARDING. A loan without security I would not consider to be prudent.

The CHAIRMAN. Has the IRS examined the movement of funds between Mr. Kaplan and the Fund to determine whether such activities were engaged in for the purpose of obtaining certain tax advantages for Mr. Kaplan?

Mr. HARDING. The Internal Revenue Service is currently in such an investigation, Mr. Chairman.

(See page 203 and Exhibit 12, page 312 for subsequent response of IRS, under dates of October 12, 1964, and December 3, 1964.)

The CHAIRMAN. Have you received any of your files on this?

Mr. HARDING. No, sir, I have not.

The CHAIRMAN. Would you agree that Mr. Kaplan has engaged in self-dealing with his Fund?

Mr. HARDING. Mr. Chairman, as a matter of general policy—

The CHAIRMAN. That is under investigation now?

Mr. HARDING. Yes, sir, it is under investigation. I would really rather not comment on those prejudicial matters as long as we have an investigation pending.

The CHAIRMAN. Well, aside from your present investigation but based upon the District Director's recommendations, would you agree?

Mr. HARDING. There was an earlier recommendation by the District Director, yes, sir, that went in that direction.

(See page 203 and Exhibit 12, page 312 for subsequent response of IRS, under dates of October 12, 1964, and December 3, 1964.)

The CHAIRMAN. What were the reasons for the substantial borrowing that took place between the Fund and Mr. Kaplan or the companies controlled by him?

Mr. HARDING. Mr. Chairman, I think that question is involved in our current investigation.

(See page 203 and Exhibit 12, page 312 for subsequent response of IRS, under dates of October 12, 1964, and December 3, 1964.)

The CHAIRMAN. Would you agree that the Fund has made speculative investments in companies operating at losses, paying little or no dividends, and whose stocks have poor marketability?

Mr. HARDING. Again, Mr. Chairman, that question is involved.

(See page 203 and Exhibit 12, page 312 for subsequent response of IRS, under dates of October 12, 1964, and December 3, 1964.)

The CHAIRMAN. Mr. Roosevelt?

Mr. ROOSEVELT. I shall wait until you get to it.

The CHAIRMAN. Would you say that the investments made by the Fund are typical of those which a trustee of a charitable foundation usually makes in order to preserve the principal and to secure reliable income?

Mr. HARDING. The same answer would apply, Mr. Chairman.

(See page 203 and Exhibit 12, page 312 for subsequent response of IRS, under dates of October 12, 1964, and December 3, 1964.)

The CHAIRMAN. If these speculative investments cannot be considered as desirable for a charitable foundation, would you agree that the size of such investments by the Fund indicates that the basic intention may have been not one of investment but rather an attempt to create business opportunities for Mr. Kaplan through the utilization of the Fund's assets? For example, the Lee National Corporation has a very thin market and has not paid dividends since early 1962. The Illinois Brick Company is listed only on the Midwest Stock Exchange and has a small amount of trading.

Mr. HARDING. This question also goes to the exempt status of the Foundation and should not be commented upon, Mr. Chairman.

(See page 203 and Exhibit 12, page 312 for subsequent response of IRS, under dates of October 12, 1964, and December 3, 1964.)

The CHAIRMAN. In your view, what is the justification for a foundation making this type of investment? Do you see any justification for it?

Mr. HARDING. The same answer, Mr. Chairman.

(See page 203 and Exhibit 12, page 312 for subsequent response of IRS, under dates of October 12, 1964, and December 3, 1964.)

The CHAIRMAN. Would you agree that the Fund's business activities may have operated to the detriment of its primary purpose?

Mr. HARDING. The same answer, Mr. Chairman.

(See page 203 and Exhibit 12, page 312 for subsequent response of IRS, under dates of October 12, 1964, and December 3, 1964.)

The CHAIRMAN. Now, we know that, by letter of March 29, 1957, Mr. Donald R. Moysey, District Director of Lower Manhattan, recommended that the Fund's tax exemption be revoked retroactively. We also note that, by letter of January 7, 1958, Mr. Raphael Meisels, successor to Mr. Moysey, upheld the latter's recommendation that the Fund's tax exemption be revoked "retroactively and progressively."

Then, by letter of March 24, 1960, Mr. Kenneth W. Moe, District Director of the Lower Manhattan District and successor to Mr. Meisels, overrode the recommendations of the two previous District Directors, and advised the Kaplan Fund that its tax returns for the years 1952 through 1956 "will be accepted as filed," and that the Fund "was exempt from Federal income taxes for such years."

Mr. Moe's letter of March 24, 1960 to the Kaplan Fund gives no indication of why the Fund's tax returns were accepted as filed for the years 1952 through 1956. Please tell us why the IRS decided that the Fund "was exempt from Federal income taxes for such years?"

Mr. HARDING. Mr. Chairman, since that information is involved in the file and I do not have it available, could I supply the answer to that question for the record, sir?

The CHAIRMAN. That will be all right, sir. If you get the file before we finish, bring it up, please.

(The information submitted by the IRS under date of October 2, 1964, appears on page 196. Also see Exhibits 12 through 25, pages 312-342.)

Mr. HARDING. If it is feasible, yes, sir.

Mr. ROOSEVELT. Would the Washington office of IRS, Mr. Harding, normally make a review of any such change from previous determinations by a previous District Director?

Mr. HARDING. The National Office does review and takes final action on proposed revocations of tax exemption. This is apparently what occurred in this case, there was a National Office review.

Mr. ROOSEVELT. Was there any significance to the fact that there were three different District Directors of Lower Manhattan during a very short period of time?

Mr. HARDING. Only that we have a rather high turn-over in Manhattan, Mr. Roosevelt.

Mr. ROOSEVELT. A high turn over in Manhattan?

Mr. HARDING. Of executive personnel.

You mean significant in the fact that we had so many personnel in that period of time?

Mr. ROOSEVELT. Yes, sir.

Mr. HARDING. Nothing other than the fact that one of those gentlemen, I know, is dead. There is no connection with this case that I am at all aware of.

Mr. ROOSEVELT. Is it worth looking into that two previous directors came to the same decision while the third one a few years later made an entirely different decision? Is the reason for this worth looking into carefully?

Mr. HARDING. In this particular case, I do not believe it appears in the chronology the Chairman has submitted, but in the case of Mr. Moe's recommendation, I believe this indicates a concurrence by the National Office and was not merely his independent judgment on the case.<sup>1</sup>

<sup>1</sup> Mr. Donald R. Moysey was Acting Director of the Lower Manhattan District office from August 8, 1955 through February 6, 1956, and was Director from February 7, 1956 through April 30, 1957. Mr. Raphael Meisels was Director of the Lower Manhattan District office from May 1, 1957 through December 31, 1959. On January 1, 1960, the Lower and Upper Manhattan District offices were consolidated. Mr. Kenneth W. Moe was Director of the consolidated Manhattan District office from January 1, 1960 through December 9, 1961. (IRS letter, October 12, 1964.)



Mr. ROOSEVELT. The reasons for this you are going to supply to the Committee?

Mr. HARDING. We are going to attempt to supply the reason for the change in the revocation position which we took earlier and the approval position which we took subsequently, yes, sir.

Mr. ROOSEVELT. Why are you just going to attempt to? Why can you not do it?

Mr. HARDING. The only reservation I have, Mr. Chairman, is, as I pointed out, the case is under investigation. We would not want to make it of public record if this would prejudice the investigation.

Mr. ROOSEVELT. But eventually, it will be available to the Subcommittee, assuming that some time you finish the investigation?

Mr. HARDING. Yes, we shall make it available. My only problem here is the public record with a case which is under active investigation by the IRS.

(The information submitted by the IRS, under date of October 2, 1964, appears on page 196. Also, see Exhibit 12 through 25, pages 312-342.)

The CHAIRMAN. In 1962 or subsequent to that date, has the IRS received any information from a former employee of Mr. J. M. Kaplan regarding the operations of the J. M. Kaplan Fund?

Mr. HARDING. Pardon me, Mr. Chairman, would you repeat the question?

The CHAIRMAN. Yes, sir. In 1962 or subsequent to that date, has the IRS received any information from a former employee of Mr. J. M. Kaplan regarding the operations of the J. M. Kaplan Fund?

Mr. HARDING. Mr. Chairman. Could we go off the record for this response?

The CHAIRMAN. Yes, off the record.

Mr. ROOSEVELT. Mr. Chairman, I think it would be fair to say that, although it may be off the record, it is public information. The press is here, so depending on your desire, let us say it is off the public record.

Mr. HARDING. Could I come to your bench, sir, and give the answer to that question privately?

The CHAIRMAN. Suppose you come up here, Mr. Harding.

(Off record discussion.)

The CHAIRMAN. The following items are herewith being inserted in the record as Exhibits:

(a) Schedules of loans receivable and payable of the Kaplan Fund during the years 1951 through 1962. (See Exhibits 13 and 14, pages 313-317.)

(b) Correspondence between the Kaplan Fund and the IRS, as submitted to us by the Fund. (See Exhibits 15 through 18, pages 318-332.)

(c) Three letters of the Kaplan Fund to Rep. Wright Patman. (See Exhibits 19 through 21, pages 333-335.)

(d) Newspaper clippings of New York Journal American dated January 5-6, 1961, and Philadelphia Bulletin of January 17, 1961. (See Exhibits 22 through 24, pages 336-341.)

The CHAIRMAN. Mr. Harding, the House will have a signal bell in just a minute. Could you be with us this afternoon?

Mr. HARDING. Yes, indeed, Mr. Chairman.

The CHAIRMAN. I have talked to Mr. Harvey and he can be here at two o'clock. I can be here at the same time, and Mr. Roosevelt can be here soon thereafter. We would like to meet for a while this afternoon, and, if you gentlemen can be back here, we will have some further questions.

Mr. HARDING. Surely, Mr. Chairman.

The CHAIRMAN. The committee will stand in recess until 2 o'clock. (Whereupon, at 11:45 a.m., the Subcommittee recessed, until 2 p.m.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

The other members asked me to start until they get here.

TESTIMONY OF BERTRAND M. HARDING, ACTING COMMISSIONER, INTERNAL REVENUE SERVICE, ACCOMPANIED BY MITCHELL ROGOVIN, ASSISTANT TO THE COMMISSIONER; SHELDON S. COHEN, CHIEF COUNSEL; AND ARTHUR B. WHITE, SPECIAL ASSISTANT TO CHIEF COUNSEL, INTERNAL REVENUE SERVICE—  
Resumed

The CHAIRMAN. This morning you stated, Mr. Harding, that the Kaplan Fund was presently under investigation by the IRS. Is this a new investigation or is it a revival of a dormant investigation?

Mr. HARDING. This is really a continuation, I guess, you might say, Mr. Chairman, of the investigation that has been under way for some time.

The CHAIRMAN. You mean several years or several months?

Mr. HARDING. Yes, sir.

The CHAIRMAN. According to the record which we presented this morning, the National Office of the IRS has been involved in the J. M. Kaplan Fund matter since January 1958. Our records also indicate that there were conferences held at the Washington National Office of the IRS during 1958. Yet, you said this morning that the Fund's file is not here in Washington. How do you explain this?

Mr. HARDING. The file, sir, is back in New York in connection with the current investigation.

The CHAIRMAN. That is where the investigation will have to be made, in New York?

Mr. HARDING. Yes, sir.

The CHAIRMAN. The National Office though will be the one who will finally pass on it, but you won't pass on it until the District Office passes on it?

Mr. HARDING. Until the recommendation comes to the National Office.

The CHAIRMAN. The Kaplan Fund attorney has advised us that there have been no conferences or hearings with the IRS since July 26, 1962. Nor have any taxes been assessed by the IRS. How do you explain this two years of lack of action by the IRS on a matter such as this which may involve millions of dollars in tax liabilities?

Mr. HARDING. Well, Mr. Chairman, I think this is connected with a matter which we discussed this morning in your chambers.

The CHAIRMAN. You see, it is rather disturbing to us that there has been a two year lack of action by the IRS on a matter such as this which could involve millions of dollars of tax liability. Has anything been done during those two years?

Mr. HARDING. Could Mr. Rogovin consult with you privately, Mr. Chairman? He has just been in New York on this particular case and I think he will give you some information on it.

The CHAIRMAN. Off the record.

(Discussion off the record.)

(See page 203 and Exhibit 12, page 312 for subsequent response of IRS, under dates of October 12, 1964, and December 3, 1964.)

The CHAIRMAN. Mr. Harding, what is the status of the possible tax liability of the Kaplan Fund for the years 1952 through 1956? Does the fact that Mr. Moe overrode the earlier recommendations of the District Directors on March 24, 1960 mean that the National Office of the IRS cannot do anything about any tax liability that may exist for the years 1952 through 1956? In other words, does the statute of limitations kill any possibility for assessing taxes for those years?

Mr. HARDING. If the statute has run on those years, Mr. Chairman, it would preclude our—

The CHAIRMAN. Has it run?

Mr. HARDING. I do not know the answer to that question.

The CHAIRMAN. Obviously it would have run on some of them, wouldn't it?

Mr. HARDING. Unless it was kept open by the consent of the taxpayer, Mr. Chairman.

The CHAIRMAN. Yes. Suppose you get that information and file it with your answer.

Mr. HARDING. Yes sir. The years being 1952 to 1956.

The CHAIRMAN. Yes, sir.

Mr. HARDING. Yes, sir.

The CHAIRMAN. That is a period for which it would have been invoked in 1957.

Mr. HARDING. Yes, sir.

The CHAIRMAN. What are the years that are presently under investigation by the Internal Revenue Service? Obviously they would be the ones that the statute of limitations would not run on, I suppose?

Mr. HARDING. Yes, sir. Those years subsequent to '57 on which the statute has not run.

The CHAIRMAN. Up through '63?

Mr. HARDING. Yes, sir. Sixty-three would, of course, be open.

The CHAIRMAN. I can't understand why, since you had knowledge of this thing before the statute of limitations ran, you didn't get some kind of understand.

Mr. HARDING. As I say, Mr. Chairman, we may have extensions running on those years, I just don't know the answer at this point. I would be glad to give you the years that are open.

(The information submitted by the IRS, under date of September 1, 1964, appears on page 197. Also, see Exhibits 12 through 25, pages 312-342.)

The CHAIRMAN. Do you have the data I requested this morning with respect to salary payments to the individual trustees of the Hanna

Fund during the final liquidation period, September 1, 1962 through January 18, 1963?

Mr. HARDING. We do not yet, Mr. Chairman. Our Director in Cleveland is attempting to get that information and will call it in to us the minute he has it.

(Following is the information submitted by the IRS under date of August 11, 1964. Also see Exhibits 6 and 12, pages 302 and 312.)

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
Washington, D.C., August 11, 1964.

DEAR MR. CHAIRMAN: This is to confirm the information furnished Mr. Olsher today by phone relative to payments by the Leonard C. Hanna, Jr. Fund of Cleveland, Ohio, to its officers and trustees for the period from September 1, 1962 to January 18, 1963, as follows:

Name and position	Salary	Distribution fee
Harold T. Clark, President and Trustee-----	\$10,000	\$23,798.26
Lewis B. Williams, Vice President and Trustee-----	15,000	23,798.26
John C. Virden, Trustee-----	5,000	23,798.26
N. J. Reigert, Secretary and Assistant Treasurer-----	2,000	-----
Expense of Earning Gross Income-----	\$32,000	-----
Expense of Distributing Principal (Rounded to)-----	-----	\$71,395.00
Total per Form 990-A for Period Covered-----	-----	\$103,395.00

I trust this will serve your purposes. If I can be of further assistance in this regard, please let me know.

Sincerely,

BERTRAND M. HARDING,  
*Acting Commissioner.*

HON. WRIGHT PATMAN,  
*Chairman, Subcommittee Foundation Study,  
Select Committee on Small Business,  
Room 129, Cannon House Office Building,  
Washington, D.C.*

The CHAIRMAN. All right. During Mr. Caplin's testimony, I mentioned that the Foundation Library Center calls itself an educational foundation. I asked Mr. Caplin whether the Foundation had a faculty, students and educational courses, and whom it was educating. Mr. Caplin replied that the Foundation had no faculty or students, and he did not know whether it offered any educational courses. He did, however, say that the Foundation Library Center is "concerned with educating the public at large and in addition the foundations themselves."

Mr. Caplin indicated that he was not too familiar with the Foundation Library Center of New York City. We will give you some of the facts.

I shall ask Mr. Olsher to continue.

Mr. OLSHER. Let me acquaint you with some of the facts regarding the operations of the Foundation Library Center during the eight year period of 1956 through 1963:

- Total receipts (including contributions received) were \$2,658,344. Of this amount, the Foundation has retained \$1,653,044, or 62 percent.

- Expenditures totaled \$1,005,300, or 38 percent of the total receipts.
- \$515,877 or almost 20 percent of the total receipts, was spent on salaries and other compensation.
- \$13,668 was spent for legal and accounting expenses.
- \$123,790 was spent for rent, including \$28,365 during the year 1963.
- \$60,982 was spent for office and library furnishings.
- Other expenses totaled \$290,983, including expenditures for clippings in the amounts of \$6,838 and \$6,139 during each of the years 1962 and 1963, respectively.
- From the end of 1956 to the close of 1963, the Foundation's assets have grown 30 fold—from \$55,592 to \$1,657,461.
- Contributions to charity have been nil.
- Support for the Foundation comes from six foundations. Their gifts to the Foundation Library Center totaled \$2,336,500 from 1956 through 1963, as follows:

Carnegie Corp. of New York.....	\$750,000
Ford Foundation, N. Y. C.....	550,000
Rockefeller Foundation, N. Y. C.....	400,000
Russell Sage Foundation, N. Y. C.....	136,500
W. K. Kellogg Foundation, Battle Creek, Mich.....	400,000
Alfred P. Sloan Foundation, N. Y. C.....	100,000
Total.....	2,336,500

- Mr. F. Emerson Andrews is the Director of the Foundation Library Center. His salary in 1963 was \$20,000 plus expenses for spending four-fifths of his time at the job. Mr. Andrews is also part time consultant to the Russell Sage Foundation of New York City.
- Paid employees of the Foundation numbered seventeen at the close of 1963. It started with four employees in 1956. Seven of the seventeen employees of the Foundation, other than Mr. Andrews, were receiving \$135 or more weekly at the close of 1963:

<i>Name and position</i>	<i>Rate of Compensation</i>
Irene R. Kay, Executive Assistant.....	\$8,500
Marianna O. Lewis, Editor.....	8,500
Dr. Ralph Nelson, Research Director.....	12,000
Lena F. Noe, Librarian.....	7,500
J. Richard Taft, Manager, Washington, D.C., Branch.....	13,000
Virginia Warner, Librarian.....	8,000
Ann D. Walton, Secretary and Assistant to the Director.....	12,000

- The Foundation publishes a bi-monthly bulletin called Foundation News which had 3,635 paid subscribers for the last issue of 1963. According to the Foundation, the subscribers to Foundation News can be classed as follows:

<i>Affiliation</i>	<i>Percent</i>
Universities and Colleges.....	40
Health and Welfare Agencies.....	17
Foundations.....	20
Humanities.....	4
Religious organizations.....	3
Miscellaneous and unidentified.....	16
Total.....	100

• Following are the number of copies of each issue of Foundation News printed beginning 1962.

Month	1962	1963	1964
January-----	3, 865	1 7, 700	4, 177
March-----	4, 081	4, 075	4, 174
May-----	4, 020	3, 979	4, 029
July-----	4, 092	4, 175	-----
September-----	4, 087	4, 029	-----
November-----	4, 093	4, 106	-----

<sup>1</sup> Promotional mailing in addition to regular subscription list was 2,764.

• The Foundation has seven depositories located in Berkeley, California, Los Angeles, Atlanta, Chicago, Kansas City, Cleveland, and Austin, Texas.

• According to the Foundation, there were 3,932 registrations in the Foundation Library Center in New York City during 1963. This does not mean that 3,932 persons used the facilities of the Center in 1963, since one person may sign in more than once during a day.

The Foundation is unable to tell us how many persons used the facilities of the seven branch depositories during 1963.

• The Foundation gathers the material for a book called "The Foundation Directory" which is published by the Russell Sage Foundation of New York City. The last two directories were published in 1960 and 1964. Pages totaled 817 in 1960 and 1,000 in 1964.

The directories list roughly 6,000 foundations. The information includes the names and addresses of the foundations, dates of incorporation, the State in which they were incorporated, their purposes, the names of the founders, officers, directors or trustees, their assets and expenditures. Income of the foundations has been omitted despite the fact that the Directory was compiled from (1) records in the Foundation Library Center's files, (2) detailed questionnaires, which included a request for income data, (3) public records of the district offices of the Internal Revenue Service, and (4) news reports.

What is the purpose of a directory of tax-free foundations that shows assets and expenditures but omits income figures? The answer is that obviously the foundations prefer not to publicize their incomes.

By letter of April 10, 1964, we asked the Foundation Library Center to furnish us the following:

- (1) Number of persons involved in the preparation of the 1964 Directory; and
- (2) Breakdown of expenses involved in the preparation of the 1964 Directory, including salaries.

In its reply of April 27, 1964, the Foundation advised us that 24 persons were involved in producing the Directory, but it could not furnish information respecting the expenses involved in the prepara-

tion of the Directory. According to the Foundation, "Preparation of the Directory is so thoroughly integrated with the other operations of the Center that no responsive answer can be made to this question. No attempt was made to distribute the time of regular or field staff devoted to this special function."

By letter of May 8, 1964, we advised the Foundation that, on October 17, 1962, it had informed us that a "rough estimate of salaries . . . attributable to the 1960 Directory totals \$46,126." We, therefore, once again asked the Center to estimate such costs for the 1964 Directory. In its reply of May 22, 1964, the Center advised us that salary costs for the 1964 Directory could not be given to us because "preparation of the Foundation Directory, Edition 2, is so thoroughly integrated with the other operations of the Center that no responsive answer can be made to this question".

I would estimate that the cost of each of the directories was no less than \$150,000.

Following is information received from the Russell Sage Foundation respecting the 1964 Foundation Directory, which of course omits salaries:

1. Manufacturing costs to April 1, 1964	\$49,000
2. Cost of promotion and distribution to April 1, 1964	\$11,290
3. General overhead to April 1, 1964	\$1,500
4. "Salaries of officers and staff. The publication of the Foundation Directory is an integrated part of our entire program of operation. As such, it is not possible for us to estimate the time officers and staff devoted to this endeavor."	
5. "Cost of research and preparation. The research and preparation of materials for the Directory were done by the Staff of the Foundation Library Center. We are, therefore, unable to provide cost estimates for this item."	
6. Number of copies printed to April 1, 1964	14,762
Number of copies sold to April 1964	8,190
7. Dollar value of sales to April 1964	\$61,425

Information received from the Russell Sage Foundation respecting cost (excluding salaries) of the 1960 Foundation Directory is as follows:

1. Cost of printing, binding, promotion, and distribution	\$86,712.46
2. "No allocation has been made to cover the time of officers and staff necessarily involved, other than a portion of the time of our publication department."	
3. Copies printed	13,738
4. Copies sold through September 30, 1962	12,278
5. Dollar value of sales	92,085

According to the Foundation's application for tax exemption, its purpose is "to assemble, and make available to the public, information about philanthropic foundations in the United States and to encourage fuller reporting by such organizations."

Its charter states that one of the purposes for which it was formed is "to promote the development and maintenance of sound standards of reporting by such foundations and to assist them in making such reports available to the public \* \* \*"

Mind you, one of the principal purposes of this organization is "to promote the development and maintenance of sound standards for reporting by such foundations and to assist them in making such reports available to the public \* \* \*" Yet, the Foundation did not

make full disclosure with respect to capital gains or losses in its tax returns for 1958 through 1961. It failed to file such schedules despite the fact that Treasury regulations require a detailed statement with respect to assets sold, including (a) date acquired, and manner of acquisition, (b) gross sales price, (c) cost or other basis (value at time of acquisition, if donated), and (d) gain or loss.

Nor did the Foundation report details of officers' salaries until 1962.

Moreover, although the Foundation Library Center bills itself as the fact-finding statistical organization on foundations, it has been unable to furnish us with (1) a study or analysis of investment portfolios of foundations—that is, an analysis of their investments in common stocks, preferred stocks, etc., or (2) names and addresses of foundations which are the largest single stockholders or major stockholders in commercial enterprises, or (3) material relating to the supervision of foundations in England, Canada, France, or other foreign countries.

The CHAIRMAN. How many District Offices does the IRS have in the United States, Mr. Harding?

Mr. HARDING. Fifty-eight, sir.

The CHAIRMAN. The public portions of foundation tax returns are available for inspection at all District Offices of the IRS throughout the country, is that correct?

Mr. HARDING. That is correct, sir. Copies of 990-A's are available at each District Office where the returns were filed.

The CHAIRMAN. As you know, the Foundation Library Center's new Washington office and its project of photocopying foundation tax returns at the IRS is being supported by a gift of \$200,000 from the Alfred P. Sloan Foundation of New York City.

Mr. Caplin stated before this Committee on July 22 that he welcomed the arrangements which permit the Foundation Library Center to photocopy foundation tax returns at a cost of 10¢ per page, one-fifth the cost to the public, "because of the opportunities it presented for additional locations where these returns would be available for public inspection."

In light of the fact that foundation tax returns are available for public inspection in the National Office of the IRS and in all your District Offices, how do you justify the expenditure of \$200,000 for the Foundation Library Center's Washington project when so many charities could utilize that \$200,000 for worthwhile purposes?

Mr. HARDING. Well, sir, of course, we don't pass on each and every donation by a charitable foundation. I would point out to you, however—

The CHAIRMAN. Why shouldn't you pass on large gifts?

Mr. HARDING. As long as it meets the purposes for which the Foundation was established, Mr. Chairman, we do not review the individual charitable donations. This would appear to meet those standards.

Beyond this, and in furtherance of Mr. Caplin's remarks, I would point out to the Chairman that the inspection of returns in the national office is done without fee to individuals who seek merely to look at the 990A's. The only charge we ever make is the 50¢ a page charge when an individual desires to have a reproduction of the return.



It is, however, quite expensive for us to search and make available to individuals the returns which are on file for their inspection.

To date in Washington, the only reproductions that have been made have been made by the Foundation Library.

We figure approximately 40¢ look-up cost on each return that an individual would like to inspect. This is not reimbursed to the Government. Hence these inspections, and there have been many hundreds of inspections of the returns in the office of the Foundation Library have actually saved the Government money.

The CHAIRMAN. You say that the reason that this arrangement is justified is that the look-up cost is 40¢ and the 10¢ is for the reproduction?

Mr. HARDING. Yes, sir.

The CHAIRMAN. And you consider then that, where there is no look-up cost, the 10¢ charge is justified?

Mr. HARDING. Ten cents is a fair reproduction cost as such, yes, sir.

The CHAIRMAN. Well, since you have three people in there serving the Foundation Library Center, it seems to me that you are obligated to add some look-up costs in addition to the 10¢ a copy.

Mr. HARDING. Well, sir, we are not involved in look-up. My information, contrary to what was discussed when Mr. Caplin was here, is that there are two employees working in that office but whether it is two or three, the returns are not looked up for the Foundation Library. They are given to them in bulk and they select from those returns those which they wish to reproduce, and return the entire group to us.

We have relatively little look-up costs, and this is included in our two cents overhead charge to them.

The CHAIRMAN. During Mr. Olsher's visit to the IRS on May 26, 1964, your staff informed him that tax return Form 990-A and 1041-A were transmitted from Mr. Vincent J. Keller's department to Mr. Kenneth W. Johnson's department, the latter being the department where the photocopying is being done by the Foundation Library Center.

In the process of photographing the returns, who, among the Library Center's employees, determines which of these returns were filed by so-called foundation, and which of them were filed by other types of charitable organizations?

Mr. HARDING. I believe Mr. Olsher and I observed a lady whose name I do not recall who was an employee of the Foundation Library examining the stacks of returns and selecting, by certain criteria, foundations as distinguished from all other exempt organizations.

The CHAIRMAN. Was her name Mrs. Tinsley or Miss Tinsley?

Mr. HARDING. I think that is the name, yes, Mr. Chairman.

The CHAIRMAN. Who did she get her guidance from?

Mr. HARDING. From the Foundation Library, I assume, sir.

The CHAIRMAN. What was Mrs. Mary Tinsley's educational and working background prior to taking the position with the Foundation Library Center in October 1963?

Mr. HARDING. I have no information on her background.

The CHAIRMAN. Our information is that she is a person who has had a high school education and does not have any special qualifications for this type work.

Mr. HARDING. Of course, she is not an employee of the Internal Revenue Service.

The CHAIRMAN. She is an employee of the Foundation Library Center?

Mr. HARDING. Yes, sir, she is. I will say, however, that I found her a very charming lady the day Mr. Olsher and I visited her and this is my only connection with her.

The CHAIRMAN. I wasn't challenging her charm.

Mr. HARDING. I understand that.

The CHAIRMAN. We were talking about her qualifications. With respect to contributions received, the Foundation Library Center's instructions to Mrs. Tinsley require her to photograph such information. The exact language is "Need schedules if supplied." Yet you have indicated that the statute prohibits such schedules from being made available for public inspection. How do you explain that?

Mr. HARDING. I suspect, sir, that they are referring to schedules other than the prohibited schedules. The schedules involving donors, of course, are prohibited from attachment to that section. There are other schedules that are attached. I presume they refer to the latter.

The CHAIRMAN. As you know, Mr. Olsher found that Mrs. Tinsley had photographed contributions which had been received by the Stephens Foundation, Incorporated, of Nashville.

Mr. Caplin tried to explain this by inserting the following in the transcript of his testimony on July 22, 1964:

We checked with the accounting firm that prepared the return. They stated it was their intent to make the donors' names part of the public inspection portion of the return.

Would you please have one of your aides call the IRS and ask them to furnish, for this record, a copy of the letter from the Stephens Foundation, Incorporated, of Nashville, or from its accounting firm, which indicates the Foundation's intent to have the IRS make the information available for public inspection?

Mr. HARDING. We can get such a letter, I assume, Mr. Chairman. As a matter of fact, the information which we got was received by telephone, and was not in the form of a letter.

The CHAIRMAN. Did you query just this one foundation, or were there other foundations whom you queried regarding such schedules?

Mr. HARDING. No, sir, we spoke to the accounting firm representing the Foundation.

The CHAIRMAN. And you will get that information and supply it?

Mr. HARDING. Would you like to have a letter from them certifying to that effect?

The CHAIRMAN. Yes, sir.

Mr. HARDING. We will be happy to put it in the record.

(The information submitted by the IRS, under dates of August 31, 1964, and September 21, 1964, appears on page 208.)

The CHAIRMAN. On this same subject of public inspection of donors' contributions to a foundation, Mr. Dillon indicated, during his testimony of July 21, that this "is something for Congress to decide."

However, when the transcript was returned to us, Mr. Dillon had crossed out that portion of his testimony which stated that the matter

of public inspection of donors' contributions, "is something for Congress to decide."

Mr. DILLON's exclusion of that part of his testimony, dealing with public inspection of donors' contributions, would now seem to indicate that such public inspection could be accomplished by administrative ruling. Yet you people have consistently told us that public inspection of donors' contributions would require a change in the present law. How do you reconcile that, Mr. Harding?

Mr. HARDING. I would like to have Mr. Rogovin reply to that.

Mr. ROGOVIN. I believe I can respond to it at this time.

The CHAIRMAN. All right, go ahead and respond.

Mr. ROGOVIN. The disclosure statute Congress passed listed the several types of information to be disclosed. The statute specified that only the total amount of contributions is to be disclosed, and it does not provide the authority to make public the names of donors.

The Revenue Service, on the other hand, with respect to its portion of the Form 990-A, has the authority to inquire of an exempt organization as to who makes the contributions. That is why the distinction exists.

As far as the Secretary's response, I don't believe it should be inferred from his deletion of the statement that this is something the Revenue Service can as an administrative matter handle.

It is the opinion of our Chief Counsel's office—an opinion of some long standing—that the donor portion could not be made public. We are prepared to submit a legal memorandum backing up the analysis if so desired.

The CHAIRMAN. Until we call you on it you need not go to that trouble.

At various times in the past, the IRS has advised us that details of contributions received by foundations were open to public inspection when they are reported in the public portions of the tax returns. Such statements have been made to us by you, Mr. Caplin, and Mr. Hobbs.

There seems to be a little confusion on this matter, Mr. Harding. Would you like to answer this now?

Mr. HARDING. I wasn't sure I understood. You say we have informed you they can be made public?

The CHAIRMAN. Yes, sir. When they are reported in the public portion of the tax returns.

Mr. HARDING. Yes, sir, I think that, if I understand it correctly, that where they are reported in the public portions they are available for public inspection. Where a list is attached only to Part I in accordance with the rules governing the preparation of the Form 990-A, they are, according to our legal advice, prohibited from public disclosure.

The CHAIRMAN. In January of 1963 the Foundation Library Center made a so-called "promotional mailing" of 2,764 copies of its publication, Foundation News. Why would a non-profit organization of this type be making a "promotional mailing"?

Mr. HARDING. I can only assume, Mr. Chairman, that this was in furtherance of the educational purpose for which the Foundation had been granted an exemption. In their view, at least, it was in furtherance of that purpose.

The CHAIRMAN. What was the Foundation Library Center promoting? Selling their own services?

Mr. HARDING. Well, perhaps, sir, as the Red Cross promotes its services and the Boy Scouts and other organizations of this type.

The CHAIRMAN. To whom was this promotional mailing sent?

Mr. HARDING. I do not know, sir.

The CHAIRMAN. For purposes of this record, I should like to have you obtain the information respecting the Foundation Library Center's "promotional mailing." Would you get that for us, please?

Mr. HARDING. We will attempt to get that for you, yes, sir.

(The information submitted by the IRS, under date of August 31, 1964, appears on page 209.)

The CHAIRMAN. The 1964 Foundation Directory sells for \$10. Would you agree that the Directory could be published by a tax-paying publisher from whom the Government may collect some taxes?

Mr. HARDING. Yes, sir, I agree that it could be prepared by a profit-making organization.

The CHAIRMAN. Secretary Dillon admitted during our hearing of July 21, that the Treasury Department does not know how many Foundations there are in the United States. Yet, the IRS repeatedly uses the figure 15,000 foundations—which is the same figure being promoted by the Foundation Library Center. How do you explain this?

Mr. HARDING. A part of the difficulty, as I think I mentioned this morning, Mr. Chairman, is the lack of a legal definition of the term "foundation". The Foundation Library has adopted a definition of foundation which for purposes of giving a figure can be used.

We do not necessarily subscribe to that definition. But it is a definition and lacking any other definition of the word "foundation", we have used it in the past.

The CHAIRMAN. You will recall that Secretary Dillon referred to the IRS some questions that we had asked him on July 21. Because of lack of time, we were unable to question Mr. Caplin on these matters and so we shall put the questions to you.

Since 1960, has the IRS, on its own initiative, ever forwarded to the FTC or the Antitrust Division information regarding the use of a foundation as a device for engaging in various trade practices which may be a violation of certain statutes administered by the Federal Trade Commission or the Antitrust Division?

Mr. HARDING. Not to my knowledge, sir.

The CHAIRMAN. Since 1960, has the IRS, on its own initiative, ever forwarded to Congressional committees, the White House, or other government departments information regarding contributions to foundations by persons or organizations that supply goods or services to companies interlocked with the foundation?

Mr. HARDING. Not to my knowledge, sir.

The CHAIRMAN. Since 1960, has the IRS, on its own initiative, found any cases where a contribution has been made to a foundation for a business purpose rather than an eleemosynary purpose? For example, under the Robinson-Patman Act, business concerns are prohibited from making disproportionate discriminatory discounts to particular buyers if the effect might be to substantially lessen competition or tend to create a monopoly. Do you know of any cases where con-

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tributions to a foundation may have been a method of getting around this provision of law?

Mr. HARDING. There have been cases, Mr. Chairman, of contributions made for a business purpose. This question, I think, could possibly go to the nature of the exempt organization, and we have undoubtedly in our examinations encountered instances of this sort.

The CHAIRMAN. Could you supply us with a list of those cases?

Mr. HARDING. We could perhaps supply you with some examples, Mr. Chairman.

The CHAIRMAN. Suppose you supply us with a half dozen examples and then we will determine whether or not they should—

Mr. HARDING. We will do the best we can.

(Following is the Information submitted by the IRS under dates of October 2, 1964 and October 26, 1964:)

Prior to the change in the statute in 1935, which first provided for the deductibility of charitable contributions made by corporations, amounts paid over to charity could qualify for deduction on the showing that they were ordinary necessary business expenses. Since then it has been recognized that the deductibility of a charitable contribution does not hinge upon the donor's motive as long as it is in fact a gift. In the light of this background it is not unusual to find gifts to charity by business firms motivated by elements of both business and charity. For example, a public utility's annual donation to a local charity, while deductible as a charitable contribution for Federal tax purposes, is also justified under state law "because a refusal might bring on the loss of the good will of the community it serves." *Board of Supervisors v. Vepco*, 196 Va. 1102 (1955).

To preclude the avoidance of the percentage limitations on the deductibility of charitable contributions where the gift could be said to bear this dual character, section 162(b) of the Code specifically denies any business expense deduction where any part of the payment is deductible as a charitable contribution. Thus, the characterization of a payment as a charitable gift or a business expense relates to the tax return of the payor and normally does not reflect upon the exempt status of the recipient.

Where the payor makes a "contribution" which in fact reflects the discharge of a business obligation to a third party growing out of the rendition of personal services, his payment will be viewed as a contribution, not by him, but upon behalf of the third party. While the payor may well be entitled to a business deduction, the third party will be deemed to be in constructive receipt of taxable income. *Treas. Reg. 1.61-2(c)*. See, *Eugene T. Flewellen*, 32 T.C. 317 (1959).

Other than the factual patterns set forth in the Oct. 16, 1963 report to your Subcommittee which may reflect this type of transaction, the records in the National Office do not disclose similar situations. As indicated above, however, the law is clear in this respect and a revenue agent coming upon such a transaction would attribute the income to the party earning it. (IRS letter, October 2, 1964.)

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The last paragraph of the statement submitted with our letter of October 2, 1964 concerning the type of case referred to at page 366 of the transcript (see above) stated that "other than the factual patterns set forth in the October 16, 1963 report to your Subcommittee which may reflect this type of transaction, the records in the National Office do not disclose similar situations." (Emphasis supplied.) As set forth in the statement submitted in our letter of October 2nd (regarding the type of case referred to at page 369), (page 168 herein), the potential conflict of interest described by you does not, in and of itself, constitute a violation of the exemption provision of section

501(c)(3). It does, however, constitute a circumstance warranting greater Service scrutiny. Our failure to cite any particular case situation was intended to mean that records in the National Office do not disclose any situations of this kind. (IRS letter, October 26, 1964.)

The CHAIRMAN. Since 1960, has the IRS, on its own initiative, ever forwarded to the FTC or the Antitrust Division information regarding foundations that may be parties to reciprocity arrangements? For example, where a business affiliated with a foundation says to one of its suppliers, "I will buy from you if you will contribute to such-and-such a foundation." Or, "If you buy from me, such-and-such foundation will make you a business loan at favorable terms"?

Mr. HARDING. Not to my knowledge, Mr. Chairman.

The CHAIRMAN. You will recall that, on July 21, we had discussed with Mr. Dillon the Rogosin Foundation-Beaunit Mills-Goodyear Tire and Rubber Company transactions. Has the IRS examined this matter to determine whether the arrangement involved a price discount from Rogosin to Goodyear, for which Goodyear (the buyer) compensated Rogosin by making a contribution to the Rogosin Foundation?

Mr. HARDING. That, as I recall, Mr. Chairman, was in a 1952 transaction, and at this late date I am unable to determine whether this particular transaction was subject to audit.

I have been informed that the 1956 return of the Foundation was examined in 1959, and the 1961 and 1962 Foundation returns were examined during the past year.

The latter examination took into consideration loans placed during prior years to purchase the corporate stock.

The CHAIRMAN. Have you examined it since that time, Mr. Harding?

Mr. HARDING. That is the latest examination of which I have a record, Mr. Chairman.

The CHAIRMAN. If this were the case, would it not seem to raise both tax and antitrust problems? First, is it a method whereby the buyer compensates the seller by making a tax deductible contribution to the Rogosin Foundation? Second, would not this practice, at best, be a distortion of the pricing and exchange process in a free enterprise economy? Third, might not this practice actually involve, (a) a violation of the Robinson-Patman Act because it involved discriminatory pricing, or (b) a violation of section 3 of the Federal Trade Commission Act because it is an unfair method of competition?

Mr. HARDING. I think that is possible, Mr. Chairman. I think that it might also involve tax consequences to non-exempt corporations.

The CHAIRMAN. Would the persons in the IRS who examine foundation tax returns be sufficiently familiar with the antitrust laws to know whether the practices I have cited may violate Section 5 of the FTC Act or the Sherman Act. If they found such practices, to whom would they report them?

Mr. HARDING. Mr. Chairman, I think some of our more sophisticated revenue agents might recognize these transactions as being a violation of other sections of the Code. Were they to determine such violations we would attempt to communicate that information to the appropriate sources.

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The CHAIRMAN. But, you don't recall any of it being communicated?

Mr. HARDING. Our records do not disclose any such communications, no, sir.

The CHAIRMAN. Are you familiar with any instances where individuals who are board members of foundations also sit on the boards of competing companies?

Mr. HARDING. I am not sure what you mean by competing companies, Mr. Chairman.

The CHAIRMAN. Well, I would think it would be rather obvious, Mr. Harding. Are you familiar with any instances where individuals who are board members of foundations also sit on the boards of competing companies.

Mr. HARDING. This is where there is an unrelated business in connection with it?

The CHAIRMAN. Take the case of persons sitting on the board of a foundation who also sit on the board of companies that are in competition with each other. Could there be a conflict of interest there? Would you take notice of it?

Mr. HARDING. I think there would be no tax consequence in that, Mr. Chairman. There may be other violations of law but I do not offhand see any tax consequence.

The CHAIRMAN. Does the IRS examine the foundations to determine whether there are any actual or potential conflicts of interest situations?

Mr. HARDING. Yes, sir, we do.

The CHAIRMAN. Do you ever report on them, if there is a conflict?

Mr. HARDING. If the conflict relates to the purpose for which the Foundation is granted an exemption we take action within the Revenue Code.

The CHAIRMAN. Could you give us six examples?

Mr. HARDING. We will attempt to do that, Mr. Chairman.

(Following is the information submitted by the IRS under date of October 2, 1964.)

Standing alone, the potential of a conflict of interest as described is not, in and of itself, a violation of the exemption provision of section 501(c)(3), since the fiduciary concept, found in state law, is not part of the statutory framework for exemption. It does, however, constitute a circumstance warranting greater Service scrutiny. Absent evidence of activities by the board member violative of the statutory requirements for exemption the described relationship alone would have no effect upon the exempt status of the foundation. (IRS letter, October 2, 1964.)

The CHAIRMAN. Since 1960, has the IRS, on its own initiative ever forwarded to the FTC or Justice information regarding actual and potential conflict of interest situations in any foundation? That is the question you said you would try to give us an illustration of.

Mr. HARDING. No, sir, this question related to forwarding to FTC or Justice. And my answer to that question, sir, is that I had no knowledge of such referrals.

The CHAIRMAN. Since 1960, has the IRS, on its own initiative, ever forwarded to the SEC information regarding any foundation's violation of the Federal securities laws?

Mr. HARDING. Not to my knowledge, sir.

The CHAIRMAN. Does the IRS examine the foundations to determine whether they are involved in any of the following activities: insider stock deals?

Mr. HARDING. It is unlikely that our examination would uncover that type of transaction, Mr. Chairman.

The CHAIRMAN. What about stock price manipulations?

Mr. HARDING. That is also unlikely.

The CHAIRMAN. Margin trading?

Mr. HARDING. Margin trading could relate to the tax exemption of the organization and would therefore be subject to examination by the Revenue Service.

The CHAIRMAN. Speculation in commodity futures?

Mr. HARDING. To the extent that these speculations could relate to the tax exemption, yes, sir.

The CHAIRMAN. Short sales?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Acting as unregulated sources of stock market credit?

Mr. HARDING. It is unlikely in this area that our examination would encompass these actions.

The CHAIRMAN. Speculation in oil wells?

Mr. HARDING. To the extent that these are highly speculative operations endangering the foundation and its exemption, yes, sir.

The CHAIRMAN. You don't find many oil well situations that are not speculative, do you?

Mr. HARDING. Well, sir, we are both from Texas, and we probably know a little bit about the oil business. Some of our friends have done rather well in it.

The CHAIRMAN. Yes, sir, they have, and I can see where some would not be considered too speculative, because they have been producing a long time.

Mr. HARDING. I think the sort of wildcatting operations that you have in mind could be highly speculative and we probably would examine into it.

The CHAIRMAN. Involvement in corporate proxy fights for control of companies whose securities are listed on the Exchanges?

Mr. HARDING. Yes, sir, we do have some cases that have arisen in that particular area. This is not a normal course of investigation on our part, but they have come about.

The CHAIRMAN. Since 1960, has the IRS, on its own initiative, ever forwarded to the SEC information regarding foundation activities in the following areas: involvement of foundations in corporate proxy fights for control of companies whose securities are listed on Exchanges?

Mr. HARDING. No, sir.

The CHAIRMAN. Involvement of foundations in insider stock deals?

Mr. HARDING. No, sir.

The CHAIRMAN. Involvement of foundations in stock price manipulations?

Mr. HARDING. Not to my knowledge.

The CHAIRMAN. Speculative activity and margin trading of foundations?



Mr. HARDING. Not to my knowledge.

The CHAIRMAN. Short sales by foundations?

Mr. HARDING. Not to my knowledge.

The CHAIRMAN. Foundations as unregulated sources of credit?

Mr. HARDING. Same answer.

The CHAIRMAN. Speculation in commodity futures?

Mr. HARDING. Same answer.

The CHAIRMAN. Does the IRS investigate foundation loans to determine whether statutory standards are being met?

Mr. HARDING. I am not sure, Mr. Chairman. I am not an expert in this field but it is my information that there are really no statutory requirements covering the loans made by foundations, other than to the extent that they would endanger the purpose for which the foundation was granted an exemption.

The CHAIRMAN. How about cases where they failed to have collateral?

Mr. HARDING. Oh, yes.

The CHAIRMAN. Or where they do any business with the donor?

Mr. HARDING. Yes, indeed, Mr. Chairman, I misunderstood your question, in those cases we do indeed.

The CHAIRMAN. You do examine?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Does the IRS examine the foundations to determine whether they are violating any Civil Aeronautics Board regulations?

Mr. HARDING. No, sir.

The CHAIRMAN. Since 1960, has the IRS, on its own initiative, ever forwarded to the CAB information regarding any foundation's violation of CAB regulations?

Mr. HARDING. Not to my knowledge.

The CHAIRMAN. Does the Treasury examine the foundations to determine whether their foreign operations may be in conflict with government policies?

Mr. HARDING. No, sir.

The CHAIRMAN. Here is something I should like to ask you about. A United States business corporation makes a gift to a United States charitable trust. The charitable trust in turn makes a gift of such funds to a United States charitable corporation. The charitable corporation spends the money for charitable purposes abroad.

Have these funds been used within the United States or its possessions when the charitable trust pays them over to the charitable corporation?

Mr. HARDING. It would appear that the funds may not have been used within the United States consistent with the requirements for a deduction under Section 170 as set out in Revenue Service rulings.

In cases of this nature pre-arrangement is the factor which affects deductibility.

If this was not part of a plan to avoid the restrictions of the statute on corporate gifts and charitable trusts for foreign distribution but was a bona fide grant of the trust to a charitable corporation there probably would be no challenge to its deductibility.

Mr. HARVEY. Mr. Chairman, might I intervene?

The CHAIRMAN. Yes, sir, Mr. Harvey.

Mr. HARVEY. This, I think, would be an appropriate time, I believe this is an apropos.

Mr. HARDING, you know of the project that is under way whereby the Rockefeller and Ford Foundations are joining hands in a terrific effort to fight hunger in the so-called "rice bowl" area of the world. I assume that during the next few years while this project is in being considerable sums of money will be expended, all of it outside the limits of our own country.

First of all, Mr. Chairman, is this the type of instance to which you have referred?

The CHAIRMAN. I wasn't thinking about that specifically, no.

Mr. HARVEY. I wonder if that is a fairly good example. I would like to ask Mr. HARDING, if we can assume that it is at least a reasonable example of the question posed by the Chairman, what your reaction would be to it?

Mr. HARDING. A charitable corporation, Mr. Harvey, is able to make these foreign expenditures, and I would assume that these transactions to which you refer are being made within the limits of the statute.

Mr. HARVEY. In other words, are you saying that if the purposes for which the foreign expenditures are made are in line with the same purposes that would be approved domestically you would approve them?

Mr. HARDING. Well, sir, we don't, as I pointed out to the Chairman earlier, we don't approve individual transactions. We examine the foundation to determine whether or not it has acted in accordance with the law.

This is a very peculiar little facet of the law that I think perhaps could be explained to you somewhat more clearly by Mr. Rogovin. It distinguishes between charitable corporations and other types of organizations.

Mr. ROGOVIN. Since 1913 when the first income tax law came into being, we have had tax exemption. In 1917, the law was amended to provide individuals a deduction for charitable contributions.

In the 1930's there was a concern as to whether exempt organizations should be allowed to use their funds abroad.

Congress considered the matter and it was the feeling at that time to restrict such use to the boundaries of this country. Philosophically, the concept was that the reason for tax deductibility and tax exemption was that this relieved the government of a burden it would otherwise have to carry.

In the late thirties, the statute allowed organizations to make grants overseas as long as they were for a charitable, educational or religious purpose. Contributions to such organizations were deductible by individual contributors. The question was whether the same treatment should be allowed corporate contributors.

At that time some of the missionary groups came in and pointed out that any restriction in the statute as to the use of deductible funds might redound to their detriment. The matter was considered at length by Congress.

When Congress was through with the statute, the provisions allowed a corporation to deduct a contribution made to another corporation for

funds to be used abroad, but through perhaps an inadvertance in drafting, trusts were not given the same preferred position. As a consequence, under a literal reading of the statute today, a profit corporation cannot deduct a contribution to a domestic "trust, chest, fund or foundation" for use overseas.

I believe the question that the Chairman asked initially demonstrates concern with efforts to get around this statutory provision by way of a corporation giving to a foundation that is a charitable corporation which, in turn, would give to a charitable trust for use overseas. If that were the case, if this were merely indirection, then the Service would have to disallow deduction for that type of charitable contribution.

In general response to your inquiry regarding the Rockefeller and Ford Foundations, as long as the work, the grant, or the project is charitable—and the relief of hunger has since the dawn of history been a charitable purpose—the fact that this charity is being conducted in Asia or anywhere else in the world would not in and of itself permit the Service to conclude this to be a non-exempt activity.

Mr. HARVEY. I want to make it perfectly clear I am not quarreling with it.

Mr. ROGOVIN. Yes, sir.

Mr. HARVEY. I have just been trying to determine this, because I thought the Chairman's question was a very pertinent one. I happen to know of this one instance, an area that involves mass hunger, and which has received more attention than most any other large scale effort, other than of a government undertaking. I think it is very important that our subcommittee, have an understanding as to just what the policy of IRS is to be in this particular type of program.

I would say that, as our own government has apparently embarked in recent years on a policy of global efforts to relieve hunger, and apparently is going to be committed to that sort of a policy, that this is not out of keeping with our international policy.

I agree that the evolutionary changes you set forth, did occur in the two decades from 1930 until 1950. That was why I voiced this inquiry.

Mr. ROGOVIN. Yes, sir. I think the idiosyncrasy of the statute was highlighted by the Chairman's question. But I don't believe it was indicated in the question that there would or should be a flatfooted prohibition of charity going outside the boundaries of the country. The recitation as to the statutory history was only to underscore the distinction between trusts and corporations as to their use of funds abroad.

Mr. HARVEY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Harvey.

Since 1960, has the IRS, on its own initiative, ever forwarded to Congressional Committees, the White House, or other government departments information regarding possible conflict of interest between the advisory roles foundation individuals hold as trustees, directors, or officers and their private financial and business interests?

Mr. HARDING. Not to my knowledge, Mr. Chairman.

I would like to insert, however, at this point a general comment which pertains to many of the questions which you have raised with Secretary Dillon.

The CHAIRMAN. Yes, sir, go right ahead.

Mr. HARDING. Yes, sir.

The Revenue Service is in a continuing relationship with the Treasury Department on all matters of tax policy, in that we provide them with information for the purpose of making proposals to the Congress.

As you know, the Revenue Service does not make any direct legislative proposals to the Congress.

We do, however, provide information to the appropriate officers within the office of the Secretary on matters of tax policy, and many of the matters to which you refer are and have been in the past, discussed with the Treasury staff for the purpose of consideration of legislative tax policy.

The CHAIRMAN. Does the IRS examine the foundations to determine whether there is interlock between the foundation directors, their investment counsels, and brokers?

Mr. HARDING. Only to the extent, sir, that such activity might endanger the exempt status of the foundation.

The CHAIRMAN. Since 1960, has the IRS, on its own initiative, ever forwarded to Congressional Committees, the White House or other government departments information regarding interlock between foundation directors, their investment counsel and brokers?

Mr. HARDING. Not to my knowledge.

The CHAIRMAN. Does the IRS examine the foundations to determine whether there may be common action on the part of foundations and associates in the purchase and sale of securities?

Mr. HARDING. Only to the extent that it would endanger the exempt status of the foundations.

The CHAIRMAN. Since 1960, has the IRS, on its own initiative, ever forwarded to Congressional Committees, the White House or other government departments information regarding common action on the part of foundations and associates in the purchase and sale of securities?

Mr. HARDING. Not to my knowledge.

The CHAIRMAN. Does the IRS examine the foundations to determine whether the foundations are channeling income and corpus in a direction that may hurt competitors and investors?

Mr. HARDING. To the extent that it would endanger the exempt status of the foundation we do, sir.

The CHAIRMAN. But not to the extent it may be harmful to a small businessman?

Mr. HARDING. No, sir.

The CHAIRMAN. Since 1960, has the IRS, on its own initiative, ever forwarded to Congressional Committees, the White House, or other government departments information regarding foundations channeling income and corpus in a direction that may hurt competitors and their investors?

I believe you answered that when you said you do not examine except where it involves their tax exempt status.

Mr. HARDING. That is right.

The CHAIRMAN. Does the IRS examine the foundations to determine whether a foundation's services—such a research, market studies, etc.—are being made available to certain businesses on a preferential basis?

Mr. HARDING. Yes, sir. We do examine it for that purpose.

The CHAIRMAN. Have you found many of them?

Mr. HARDING. There have been some, yes, sir. There is a specific provision in the statute regarding research organizations which do research on a preferential basis, and we do, therefore, in looking at these prohibited transactions, examine into this area.

The CHAIRMAN. I yield.

Mr. HARVEY. I wonder if I might interpose a question at this juncture as to what your procedural operation is. Are you going to approach these instances which you do bring to light on the basis of calling their attention to them, and asking them to desist or are you going to proceed to prosecute them and make examples of them?

Mr. HARDING. Well, as far as I know there are no prosecutive elements in this Mr. Harvey. There is a basic for the revocation of the exempt status for the research organization if we found these prohibited transactions having taken place.

Mr. HARVEY. Well, I referred, in using the term "prosecution," to vigorous enforcement of the law.

Mr. HARDING. I assure you, sir—

Mr. HARVEY. I think it is important to this Committee to know at this juncture just what the policy of the IRS is to be. It refers also to several of these other questions that our Chairman has asked you in the past few minutes. They are probably a part of a—I am sure you have—a, policy at IRS on this subject. Now, it is a good question. You are the new administrator, are you not?

Mr. HARDING. I am the Acting Commissioner.

Mr. HARVEY. Well, you are making policy.

Mr. HARDING. Yes, sir.

Mr. HARVEY. Just what is your policy going to be?

Mr. HARDING. My policy, sir, is a continuation of the policy which we have followed rather consistently for the last several years involving a very vigorous enforcement of the law as regards foundations, exempt organizations of all types.

I would like to mention, however, that we are confronted with a very difficult statute to administer. We have been notably unsuccessful where we have brought these cases into court. We are doing, in my opinion, a very vigorous job within the limitations of the law and the limitations of the courts opinions on the law.

Mr. HARVEY. I think you have been very honest in your answer. You are a competent executive, I am sure, and you say you have not been too successful in prosecuting cases that were brought to your attention. How successful have you been with this particular piece of legislation? How successful have you been in the type of desist warnings to them? Has that been tried?

Mr. HARDING. Oh, yes, sir.

Mr. HARVEY. Would you say that has been a very successful operation?

Mr. HARDING. I think that generally you could say that it has been successful. Where these transactions are pointed out to them, their exemption was threatened or where it has been suspended for one or more years there have been a number of foundations and other exempt organizations that have gotten into line. This area of activity is more successful than our action in the courts.

Mr. HARVEY. Well, I think it is important for us to know that.

Now are you ready to give the Subcommittee a definite recommendation with the regard to the amendment to the law that will make your efforts more effective if you do have to prosecute?

Mr. HARDING. As I pointed out, Mr. Harvey, we are under somewhat of a limitation on making legislative recommendations, since this is the prerogative of the Treasury Department.

I am informed by Mr. Dillon and Mr. Surrey, of his staff, that a very intensive study of the law, of the problems inherent in the law is currently underway, and that legislative recommendations to the Congress will be forthcoming in the not too distant future. We will cooperate and are cooperating with the Treasury Department in that endeavor.

Mr. HARVEY. It would be inconceivable to me that the Treasury Department—and this is in no sense downgrading their capabilities—did not consult with you before making the recommendations.

Mr. HARDING. You can be assured, sir, this they do. They are consulting with us continuously.

Mr. HARVEY. Thank you.

The CHAIRMAN. Since 1960, has the IRS, on its own initiative, ever forwarded to Congressional Committees, the White House, or other government departments information regarding foundations' services—such as research, markets studies, etc., being made available to certain businesses on a preferential basis? Did you answer that?

Mr. HARDING. I answered in-so-far as our examination practices are concerned.

The CHAIRMAN. Would you give us examples of some cases?

Mr. HARDING. We will attempt to find cases; yes, sir.

(Following is the information submitted by the IRS under date of October 2, 1964:)

Four cases of the type suggested are outlined from Service files as follows:

(1) An organization, which was first created by trust indenture, was reorganized as a charitable corporation. Its stated aim is teaching and disseminating economic knowledge with a view to advancing the welfare of the American people. The organization's charter authorizes it to do everything necessary, suitable and proper for accomplishing its purposes.

"Members" of the corporation are those individuals who subscribe to its publications. Subscription rates of publications are fixed to yield a profit to the corporation. Periodicals contain articles concerning current economic events, money-credit trends, reports, such as statistical indicators of business-cycle changes, etc. Subscribers are entitled to receive a quarterly list of recommended securities which is also published by the organization. A supervisory service is offered by the organization to its members. This service consists of specific recommendations for sale and purchase of securities making up a specific portfolio. A charge of one-fourth of one percent of the total value of the portfolio is charged for this service.

A sustaining membership is available to persons paying \$35 annually; this entitles them to receive all periodicals and books published by the organization.

In comparison to the above services offered to members, the organization furnishes copies of its books to approximately 2000 libraries and awards two-year scholarships for a course training in research and advanced economics at a post graduate level to a limited number of persons. In co-operation with three private foundations, the organization was instrumental in establishing an Inter-Foundation Committee for Economic Scholarships. Funds for these activities are realized

from the organization's membership fees and from fees charged for its investment services. (*American Institute for Economic Research*, 302 Fed. (2d) 934.)

(2) A corporation was organized to encourage fine arts by providing education and teaching of the art of architecture and collateral crafts. An outstanding architect serves as both manager of the foundation and director of all its activities.

The foundation's objectives are accomplished by selecting young men and women for training as competent builders, architects and designers for industry. Approximately fifty apprentices serve at one time. Tuition of \$1,500 a year is paid by each apprentice; this entitles him to room and board and a small stipend. The manager and director selects all apprentices and determines all activities undertaken by the foundation while at the same time continuing his professional architectural pursuits.

The foundation conducts a large architectural practice in all of its phases, using its trainees to provide services for which it charges a fee.

(3) An organization was incorporated to promote increase of knowledge of the applicability of dyes and chemicals in the textile industry, encourage practicable research work on chemical processes and materials of importance to the textile industry, and interchange the results of research and professional knowledge among its members. Membership in the organization consists of individuals and companies representing substantially all of the textile industry. Research conducted by the corporation is aimed at establishing tests and standards for the industry with regard to sales promotion of particular products. Results of its research are printed in a technical journal. The organization also publishes and sells a technical manual and a "color index." The corporation has executed a contract with a commercial publisher to which it makes available the results of its research for a specific consideration. By the terms of the agreement with the publisher, copies of the magazine are distributed to each of the organization's members at a stipulated price paid by the corporation. The corporation's research materials are published under a special heading in the commercial magazine.

(4) A practicing physician, together with his father, and another physician, executed a trust agreement establishing a foundation for scientific purposes, including medical research. The foundation was managed by the two physicians for the first two years during which time they also engaged in the private practice of medicine. At the end of the first two years, the physicians became full-time employees of the foundation.

The foundation receives grants from pharmaceutical companies and gifts from local physicians. The research conducted by the foundation relates solely to the same medical specialization in which the physician-trustees practice. The foundation is utilized to conduct tests for patients of the physicians; the foundation charging a set fee for them. The tests are used in the diagnosis and treatment of patients' illnesses as well as for research purposes. The foundation's facilities are open to all practicing physicians in the area. The foundation employs a nurse and a part-time research worker. Records and studies of the foundation are used by one of the physicians in connection with a class taught by him at a medical school and as a basis for a series of lectures given by the two physicians before medical associations, hospital staffs, and other organizations. Both of the physician-trustees have made contributions to the foundation for which they claim a charitable contributions deduction, notwithstanding that they are now full-time employees there. (*John Joseph Cranley, Jr., and Helen Theresa Cranley (Cranley Research Foundation)* Dec. 24, 609(m), T. C. Memo 1961-4) (IRS letter, October 2, 1964).

The CHAIRMAN. Does the Treasury examine the foundations to determine whether foundation income or corpus is being used to grant benefits to a company employee?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Have you had any such cases?

Mr. HARDING. Yes, sir. I am sure we have had instances.

The CHAIRMAN. Would you get up a half dozen samples or examples, please?

(Following is the information submitted by the IRS under date of October 2, 1964:)

As indicated in the testimony, such grants may be permissible. One of the basic problems has been whether the number of potential beneficiaries is sufficient to form a charitable class.

The Service has argued that these arrangements are a means of supplemental compensation and are motivated by business considerations rather than a desire to accomplish some purpose described in section 501(c)(3) of the Code. For the most part we have been unsuccessful. (See, e.g., *William B. Chase*, 19 TCM 234 (1960) and *T. J. Moss Tie Co. v. Commissioner*, 18 T.C. 188 (1952).)

In the case of *Charleston Chair Company v. U.S.*, 203 Fed. Supp. 126 (E.D. S.C., 1962), however, where 30 percent of the foundation's available resources was used to provide a scholarship for the creator's son, the Service successfully argued that a personal rather than charitable purpose had been served. (IRS letter, October 2, 1964).

Mr. HARDING. My lawyers are in a dispute, Mr. Chairman.

The CHAIRMAN. Yes, sir.

Mr. HARDING. Here again, Mr. Chairman, is a little nuance of the law which I think some of my more learned colleagues could explain better than I.

There is a problem here which we have encountered but, as a general rule, the transactions to which you refer are not necessarily prohibited.

Mr. ROGOVIN. Mr. Chairman—

The CHAIRMAN. You may proceed.

Mr. ROGOVIN. A corporation could set up a private foundation and could give, say, scholarships to an indefinite class such as the children of the employees of that corporation. Certainly if this were, for example, one of the large corporations in the United States with ten thousand employees, this type of activity would be an exempt activity.

Now, when we find a company foundation making charitable contributions or charitable grants to its employees, a problem may arise with respect to the class of beneficiaries. If, for example, there are a small number of potential beneficiaries, it may be determined that this is merely a way of deflecting compensation without the employee having to pick it up on his income tax return. This is the type of situation which we would certainly look into. We have one case of this type in court. This is not to say, however, that company foundations cannot make bona fide grants to employees or to their relatives.

Mr. HARDING. I believe I recall one case, Mr. Chairman, where some 30 percent of the foundation's income was devoted to the educational endeavors of the son of the president of the corporation, and we looked with great disfavor upon this transaction.

The CHAIRMAN. Mr. Roosevelt.

Mr. ROOSEVELT. Mr. Harding, may I ask one question that does not bear directly on the problems here but more directly on some other problems that I happen to be interested in.

Is part of your difficulty in following the requests of these foundations to be certified as being eligible for tax exemption, due to the fact that you do not have the personnel available to handle it with dispatch?



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Mr. HARDING. Well, sir, before you came in we discussed the fact that the Revenue Service does not really examine these transactions as they occur. We see them as part of the records of the organization when we examine their returns.

On the general question, however, in terms of manpower limitations, yes, sir, we do have a problem. We have a problem in all areas of the tax field in terms of the availability of qualified personnel to make the examinations necessary, in our view, to keep the system intact.

We have in the neighborhood of some 14,000 to 15,000 revenue agents throughout the country. This is to do all types of examinations of all individuals, corporations, tax exempt organizations and all the rest, and we have been attempting over the last several years to increase the size of that staff in order to do a larger percentage of the total.

We are currently examining somewhere in the neighborhood of 5 percent of the returns filed with us, and we think that this is too low for effective administration of the tax law, and we are attempting to increase the size of that staff. We are, of course, limited by the appropriations made available to us.

Mr. ROOSEVELT. The thing I was referring to deals generally with the area of fraternal organizations.

Mr. HARDING. Fraternal—

Mr. ROOSEVELT. Individual lodges.

Mr. HARDING. Yes, sir.

Mr. ROOSEVELT. Organizing a corporation. They apply to the Treasury for a tax exempt certification. Have those types of organizations been growing in the number as far as applications are concerned?

Mr. HARDING. We have had a general growth in the exempt organization field. I cannot testify as to the increase in fraternal organizations, but I would assume, just on the basis of the general growth of the economy and of the population, there has been a sizable increase in that area as well.

Mr. ROOSEVELT. You are pretty well understaffed in your ability to handle these applications as they come in. How much do you actually do in the way of field investigations on applications for an exempt status?

Mr. HARDING. Well, these are relatively simple investigations in terms of audits as compared to some of the more complicated financial operations that you encounter in the foundation area. But we typically will spend two or three man-days per examination.

Mr. ROOSEVELT. Even on an initial application?

Mr. HARDING. We make no examination on an initial application, Mr. Roosevelt.

Mr. ROOSEVELT. Why do you have three or four months backlog on initial applications?

Mr. HARDING. This is a limitation of staff for handling these ruling requests as distinguished from our examination of the organizations, once they are in being and are filing tax returns. There are two separate problems.

Mr. ROOSEVELT. Yes, I recognize that. But, on the other hand, when you grant them, which is the first problem, you then have a

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second problem. My real interest here is not only that I think it is a little difficult to get individual applications delayed as long as they seem to be delayed but, secondly, whether we ought to look into the tremendous growth in this area as something that should possibly be discouraged. I happen to notice in the Los Angeles area that many of the fraternal orders have turned to this method of doing good deeds, making their donations tax exempt by organizing this kind of tax exempt organization within the other organization which is frankly for different purposes. I wondered if you had any comment as to whether this is getting to be a problem.

Mr. HARDING. We are in very serious difficulty in processing the entire field of exempt organization applications throughout the country. It is growing, as I said, in total tremendously. We are now running in the neighborhood of 12,000 applications a year, and we have a relatively small staff for the purpose of processing those applications. We have recently increased that staff, however.

Mr. ROOSEVELT. Yes, sir. Well thank you, Mr. Harding.

The CHAIRMAN. Mr. Harding, we have more questions we would like to ask you. I conferred with you before we commenced this afternoon, and you stated you could not conveniently be here Friday since you are going on vacation commencing then. But you could be here, say, the Monday following?

Mr. HARDING. I think we discussed the date of the 31st, Mr. Chairman. That being the last Monday of this month.

The CHAIRMAN. Yes, sir. Will that be satisfactory?

Mr. HARDING. That will be quite satisfactory.

The CHAIRMAN. We will be quite willing to do that, and I have conferred with the members, and we will just recess your part of this until Monday the 31st at 10 o'clock here in this room then, Mr. Harding.

Mr. HARDING. That will be fine.

The CHAIRMAN. Thank you and the other gentlemen for your cooperation.

Mr. HARDING. Thank you for your courtesy.

The CHAIRMAN. We will see you then on the 31st.

(Whereupon at 3:25 p.m., August 10, 1964 the subcommittee recessed, to reconvene at 10 a.m., on Monday, August 31, 1964.)

## TAX-EXEMPT FOUNDATIONS: THEIR IMPACT ON SMALL BUSINESS

MONDAY, AUGUST 31, 1964

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE No. 1 ON FOUNDATIONS  
OF THE SELECT COMMITTEE TO CONDUCT STUDIES AND  
INVESTIGATIONS OF THE PROBLEMS OF SMALL BUSINESS,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 10:10 a.m., in room 1301, Longworth House Office Building, Hon. Wright Patman (chairman of the subcommittee) presiding.

Present: Representatives Patman, and Roosevelt.

Also present: H. A. Olsher, Director of Foundation Studies; Myrtle Ruth Foutch, Clerk; and Eugene Loehl, Assistant Minority Counsel.

The CHAIRMAN. The committee will please come to order.

This is the fifth session of hearings of Subcommittee No. 1 on the subject of the Federal Government's supervision of tax exempt foundations and charitable trusts.

On behalf of the subcommittee, I should like to welcome our witness, Bertrand M. Harding, Acting Commissioner of the Internal Revenue Service.

### TESTIMONY OF BERTRAND M. HARDING, ACTING COMMISSIONER, INTERNAL REVENUE SERVICE; ACCOMPANIED BY MITCHELL ROGOVIN, ASSISTANT TO THE COMMISSIONER—Resumed

Mr. Harding, we are glad to have you, sir. I would rather have all the members here, but they have their problems, and hence have asked me to go ahead and take the testimony. Of course, I shall be glad to do it, although I would much prefer to have them present. The House is not reconvening today, so many Members are away in their districts.

I shall start the questioning. Mr. Harding, do you feel that you have a moral obligation to report to the appropriate governmental departments violations of law by foundations?

Mr. HARDING. Yes, sir, Mr. Chairman.

The CHAIRMAN. You do have that obligation?

Mr. HARDING. Yes, sir. Within the limits of our disclosure statute, of course.

The CHAIRMAN. Within the limits of what?

Mr. HARDING. Within the limits of our disclosure statute.

The CHAIRMAN. Disclosure statute?

Mr. HARDING. Yes.

The CHAIRMAN. What does that mean?

Mr. HARDING. There are prohibitions, as you well know, on the disclosure of information.

The CHAIRMAN. You will recall during our hearing of August 10 I asked you to explain the fact that the IRS has taken no action on the Kaplan Fund for several years, despite the fact that millions of dollars in tax liabilities may be involved. Whereupon you requested that Mr. Rogovin be permitted to consult with us privately, and I acceded to your request.

After due consideration, I believe the public interest will be best served if the information imparted to us by Mr. Rogovin is made part of this hearing record. Mr. Rogovin informed us that the J. M. Kaplan Fund has been operating as a conduit for channeling CIA funds and hence you would rather not discuss the matter for the public record. He also indicated that the Fund's operations with the CIA was the reason for the lack of action on the part of the IRS.

During our hearing of August 10, I asked you to obtain the complete file on the J. M. Kaplan Fund, including correspondence, memoranda, summaries of hearings, conferences, etc. Have you brought that file with you, Mr. Harding?

Mr. HARDING. Mr. Chairman, I have not brought the file with me. It was my understanding from our last hearing that we were in agreement that since the case was under active investigation by the Internal Revenue Service that it would be improper for me to comment on the material in that file.

The CHAIRMAN. For the moment, at that time, we passed it over. But now, under the circumstances, we want you to produce the file and, of course, there are two ways we can do that. One is by a request, and the other is by subpoena. I do not think you would want a subpoena issued for the file. Are you going to produce it for us?

Mr. HARDING. Well, the investigative file, Mr. Chairman, is, as I indicated, in New York.

The CHAIRMAN. It has been about three weeks, Mr. Harding.

Mr. HARDING. Mr. Chairman, my understanding was that we had agreed between us—

The CHAIRMAN. I think, if you will read the record, we made it rather plain that we wanted to have it at this time. We are going to have to request you to produce that file. Will you do it?

Mr. HARDING. Mr. Chairman, I would like to consult, and answer that question later. Would that request be satisfactory, sir?

The CHAIRMAN. You mean this morning?

Mr. HARDING. Yes, sir.

The CHAIRMAN. That will be all right.

Did the CIA ask the IRS for its opinion as to whether the Kaplan Fund should be used as a conduit to channel CIA funds?

Mr. HARDING. Mr. Chairman, I have no personal knowledge of the CIA's connection with this case.

The CHAIRMAN. You have no personal knowledge?

Mr. HARDING. No, sir; I do not.

The CHAIRMAN. Do you, Mr. Rogovin?

Mr. ROGOVIN. Yes, sir; I have limited knowledge about it.

The CHAIRMAN. You have limited knowledge about it?

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. Well, I shall ask you the question. Did the CIA ask the IRS for its opinion as to whether the Kaplan Fund should be used as a conduit to channel CIA funds?

Mr. ROGOVIN. It did not, to the best of my knowledge.

The CHAIRMAN. Did the IRS recommend to the CIA that the Kaplan Fund be used as a conduit to channel CIA funds?

Mr. ROGOVIN. Again, not to the best of my knowledge.

The CHAIRMAN. You don't know anything about it, Mr. Harding?

Mr. HARDING. No, sir; I have not been dealing with the CIA in any matters.

The CHAIRMAN. Since this is a matter of such great importance, I do not understand why you did not have something to do with it. You were acting for the Director often times, were you not, Mr. Harding?

Mr. HARDING. Yes, sir, I was; for the Commissioner.

The CHAIRMAN. You have been there for 13 years, haven't you?

Mr. HARDING. Eleven years.

The CHAIRMAN. Eleven years—and you knew nothing about this?

Mr. HARDING. We have an arrangement, Mr. Chairman; in dealing with the CIA we have to have very limited numbers of people involved in these relationships, and Mr. Rogovin represented the Commissioner in all dealings with the CIA for our office.

The CHAIRMAN. He has all the information with reference to this?

Mr. HARDING. Well, he has such information as he has; yes, sir.

The CHAIRMAN. All right, I shall ask him.

At the time that the CIA-Kaplan Fund-IRS arrangement was being discussed, did the IRS inform the CIA that the Kaplan Fund was under investigation by the IRS?

Mr. ROGOVIN. Mr. Chairman, the CIA did not advise us or ask us for our advice regarding their dealings with the Kaplan Fund. We became aware of the CIA's interest in the Kaplan Fund when they contacted us to indicate that they had been led to believe that an audit was being conducted of the Kaplan Fund. They were concerned as to whether or not their interest in the Fund would be made public and whether their interest in the Fund would to any degree jeopardize the status of the Foundation.

The CHAIRMAN. When was that?

Mr. ROGOVIN. I believe it was in late 1961, I am not sure of the date. I think Mr. Olsher—

The CHAIRMAN. What is that now?

Mr. ROGOVIN. I believe it was in late 1961. I am not sure of the date.

The CHAIRMAN. In May 1961 that is the first knowledge you had of it?

Mr. ROGOVIN. No, I said late 1961. I am not sure of the date, no, sir.

The CHAIRMAN. You had no knowledge of it before that time?

Mr. ROGOVIN. That is correct.

The CHAIRMAN. How long had it been carried on between the CIA and the Kaplan Fund, to the best of your information, before you had knowledge of it?

Mr. ROGOVIN. I believe they indicated it was within a year or so prior to that. I believe Mr. Olsher has the specific dates from discussions with CIA.

The CHAIRMAN. Let me see, this question was, at the time that the CIA-Kaplan Fund-IRS arrangement was being discussed, did the IRS inform the CIA that the Kaplan Fund was under investigation by IRS? Did you inform them?

Mr. ROGOVIN. No, sir. First of all, there was no arrangement, and if I could take a second to indicate, in our discussions of August 10, I don't believe I indicated that—

The CHAIRMAN. You put a specific date, I had not heard you mention that before—August 10.

Mr. ROGOVIN. The fourth session of the Subcommittee.

The CHAIRMAN. Yes, sir.

Mr. ROGOVIN. When I approached the bench.

The CHAIRMAN. That is three weeks ago. That was not 1961.

Mr. ROGOVIN. That is right. I just wanted to revert back to that point, to indicate if I could for a moment—

The CHAIRMAN. Yes, sir.

Mr. ROGOVIN (continuing). That the Revenue Service's action with respect to the Kaplan Fund has not been terminated nor have we changed our legal opinion or conclusion because of the CIA. What I was pointing out at that time was that it was a sensitive matter; we were dealing with it in a sensitive fashion, and there was some time delay as a result. But not that our decision was going to be changed in any respect.

Now, going back specifically to the question asked, there was no arrangement between the Revenue Service and the CIA dealing with the Kaplan Fund. They advised us—

The CHAIRMAN. In other words, they just told you.

Mr. ROGOVIN. They told us that they had been dealing with the Fund.

The CHAIRMAN. Yes.

Mr. ROGOVIN. And that they were not aware of the fact that the Revenue Service, the New York District, was examining the Fund, and they just wanted to alert the Washington Office of Internal Revenue—

The CHAIRMAN. That was 1961?

Mr. ROGOVIN. Yes, sir; I believe it was.

The CHAIRMAN. And you did not inform them that the tax exempt status of the Kaplan Fund had been recommended for revocation in 1957 and again in 1958?

Mr. ROGOVIN. I would assume that they knew at that time that we were examining them for the possibility of revocation.

The CHAIRMAN. But you did not give them any information of the 1957 and 1958 action?

Mr. ROGOVIN. I believe I pointed out to them we had had problems with this Fund before; yes, sir.

The CHAIRMAN. In view of the fact that the Kaplan Fund has been under investigation by the IRS for a number of years prior to the CIA-Kaplan Fund-IRS arrangement, can you tell us why the CIA chose this Fund to operate as a conduit for channeling funds?

Mr. ROGOVIN. I believe that would best be answered by a representative of the agency, the CIA.

The CHAIRMAN. How many foundations have been used as conduits for channeling CIA funds during the years 1951 to date?

Mr. ROGOVIN. I don't know the answer to the question.

The CHAIRMAN. Do you know the answer, Mr. Harding?

Mr. HARDING. No, sir; I do not.

The CHAIRMAN. Is there any representative of the CIA here?

Mr. HARDING. Not to my knowledge, sir.

(Laughter.)

The CHAIRMAN. Do you have a way of securing this information?

Mr. HARDING. I think that Mr. Rogovin suggested, Mr. Chairman, if you desire testimony on this, the appropriate agency would be the CIA. I think we would feel a little delicate in passing this information on even if we had it.

The CHAIRMAN. What are the names of the persons in the IRS who participated in the CIA-Kaplan Fund-IRS arrangement at the outset?

Mr. HARDING. I think Mr. Rogovin stated there was no arrangement, and he has, as I indicated to you, Mr. Chairman, been our contact in the national office for relationships with the CIA, so I think that would be the name that we would supply to that question.

The CHAIRMAN. Mr. Rogovin, you are the one who talked to these people. Who talked to you about it?

Mr. ROGOVIN. Who from the—

The CHAIRMAN. CIA.

Mr. ROGOVIN (continuing). CIA—representatives of their general counsel's office.

The CHAIRMAN. Who are they by name?

Mr. ROGOVIN. Milan Miskovsky.

The CHAIRMAN. Did you have one or more conversations with him?

Mr. ROGOVIN. More than one.

The CHAIRMAN. And you think that was in the latter part of 1961. Have you had conversations with him subsequent to that time?

Mr. ROGOVIN. Yes, sir; I have.

The CHAIRMAN. A few times or many times?

Mr. ROGOVIN. Many times.

The CHAIRMAN. You never did tell him that the Kaplan Fund was in trouble with the IRS?

Mr. ROGOVIN. My answer to the earlier question was that I did.

The CHAIRMAN. You did tell him?

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. At the outset, Mr. Miskovsky is the gentleman to whom you talked?

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. Who are the people at IRS whom you talked to about this at the same time or subsequent times?

Mr. ROGOVIN. In speaking with people within the service, I spoke to them with respect to this as another case within the Revenue Service; to secure information as to the status, to look at the file when it was in Washington, to generally acquaint myself with it. But there was no need to discuss this aspect with individuals who were working on the case within the Revenue Service.

The CHAIRMAN. Mr. Harding said it was assigned to you and you handled it—

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN (continuing). From the beginning. Was that true? In other words—the latter part of 1961 was the first contact, to your knowledge, that you had with CIA concerning the Kaplan Fund?

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. And nobody else in the department has handled it except you since that time?

Mr. ROGOVIN. This aspect of it; yes, sir.

The CHAIRMAN. Well, have you conferred with any of them about it?

Mr. ROGOVIN. Well, I have conferred with people within the department, within the Revenue Service, regarding the substantive issue of the case, yes. But this is the normal proceeding within the Revenue Service.

The CHAIRMAN. Was anybody connected with the IRS in touch with the CIA regarding this Kaplan Fund prior to the time that you were approached by the CIA representative the latter part of 1961?

Mr. ROGOVIN. I do not know, I am not sure.

The CHAIRMAN. Do you know, Mr. Harding?

Mr. HARDING. I do not, sir.

The CHAIRMAN. So far as you know then, you were the first one approached in the latter part of 1961?

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. And you informed them then that the Kaplan Fund was in trouble with the department, IRS?

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. What was their reaction as to proceeding with the Kaplan Fund after having that knowledge? Did they make any statement as to what their course would be in the future?

Mr. ROGOVIN. I do not recall any specific statement as to a course of conduct on their part.

The CHAIRMAN. In what year and month was the CIA-Kaplan Fund-IRS arrangement made? Of course, you have answered that, in which you say there was no arrangement—but the discussion was the latter part of 1961?

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. You deny there was any arrangement or discussion before your discussion with the CIA representative in the latter part of 1961?

Mr. ROGOVIN. Mr. Patman, all I can say is that I do not believe any arrangement took place. I am not privy or knowledgeable of any arrangement that took place at any time.

The CHAIRMAN. At any time?

Mr. ROGOVIN. Yes.

The CHAIRMAN. Prior to or subsequent to the latter part of 1961?

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. But there were discussions—of which you say there were many, subsequent to your 1961 conversation or contact?

Mr. ROGOVIN. Let me put the record straight on that. There were a number of discussions. I believe the question you asked before was on how many occasions did I speak with Mr. Miskovsky, and I said



on many occasions. With specific reference to the Kaplan Fund, I believe there were something less than a half dozen or so discussions.

The CHAIRMAN. Yes. And, Mr. Harding, you insist that you do not know anything about any arrangement between CIA and IRS either prior to the latter part of 1961 or subsequent to that time?

Mr. HARDING. That is correct, sir.

The CHAIRMAN. You do not know of any arrangement of any kind, you had no discussion with CIA people about—

Mr. HARDING. No, sir; I have never discussed this matter with CIA people.

The CHAIRMAN. In what year and month did the Kaplan Fund make its first output of CIA funds?

Mr. ROGOVIN. I am not aware of that, Mr. Patman.

The CHAIRMAN. You do not have any knowledge of any funds being used or how much or—

Mr. ROGOVIN. No, sir. I believe again CIA would be the appropriate witness.

The CHAIRMAN. In what year and month did the Kaplan Fund make its last output of CIA funds? Were you in on that, Mr. Rogovin?

Mr. ROGOVIN. No, sir.

The CHAIRMAN. In what year and month was the CIA-Kaplan Fund-IRS arrangement terminated? Well, of course, you deny there was an arrangement. But has the discussion terminated between you and the CIA, Mr. Rogovin?

Mr. ROGOVIN. I do not believe that there has been a termination. I believe after our last session before your Subcommittee I brought to the CIA's attention your interest in this Fund.

The CHAIRMAN. And is Mr. Miskovsky the gentleman you have been in conversation with?

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. And he is the only one at CIA that you dealt with?

Mr. ROGOVIN. No, I dealt with the general counsel, Mr. Houston.

The CHAIRMAN. What is his name?

Mr. ROGOVIN. Lawrence Houston.

The CHAIRMAN. A few times or many?

Mr. ROGOVIN. Half a dozen times.

The CHAIRMAN. If the Kaplan Fund started to operate as a conduit for the channeling of CIA funds in 1961, why should this affect any tax liabilities for the years prior to 1961?

Mr. ROGOVIN. I am not aware that it should.

The CHAIRMAN. According to the law it should not, should it?

Mr. ROGOVIN. That is right.

The CHAIRMAN. How much money did the CIA channel through the J. M. Kaplan Fund, do you know, Mr. Rogovin?

Mr. ROGOVIN. No, I do not.

The CHAIRMAN. The IRS has the responsibility to see that a foundation's funds are used in accordance with the law. Has the IRS examined the Kaplan Fund to determine whether the CIA funds—which are, of course, public funds—were actually disbursed by the Kaplan Fund? Mr. Harding, will you answer that?

Mr. HARDING. Not to my knowledge.

The CHAIRMAN. What about you, Mr. Rogovin.

Mr. ROGOVIN. I believe during the audit examination one of the items of the examination for determination was as to what funds went where. And if these funds show up as receipts of the Foundation, they would be traced through to determine what projects it supported.

The CHAIRMAN. Has the IRS verified that the CIA funds were actually disbursed by the Kaplan Fund, Mr. Harding?

Mr. HARDING. I do not know of any such verification.

The CHAIRMAN. Do you know anything about this—Mr. Rogovin?

Mr. ROGOVIN. Again, as part of the audit examination, this would be part of the verification. The District Office did not know of the agency's relationship with the Kaplan Fund, and audited the Kaplan Fund just as they would audit any other exempt organization.

The CHAIRMAN. Mr. Harding, I cannot understand why it is that you—who have been Acting Commissioner for so long—have no knowledge of this at all and have delegated all to Mr. Rogovin.

Mr. HARDING. Mr. Chairman, I was appointed Acting Commissioner on the 10th of July this year.

The CHAIRMAN. I know you were, but you signed the Commissioner's name long before that, did you not?

Mr. HARDING. When the Commissioner was absent I acted in his absence; yes, sir.

The CHAIRMAN. I know you did. But you signed his name and acted for the Commissioner over a period of years, did you not?

Mr. HARDING. Did what, sir?

The CHAIRMAN. You acted for the Commissioner over a period of years.

Mr. HARDING. In his absence.

The CHAIRMAN. Yes. You know it was brought out here that his name was signed to documents that he said he did not sign at all.

Mr. HARDING. I never signed Mr. Caplin's name to any document, Mr. Chairman.

The CHAIRMAN. Who signed his name then when he did not sign it?

Mr. HARDING. I believe Mr. Caplin testified when he was here that Mr. Edwin Perkins was authorized to sign his name to certain documents.

The CHAIRMAN. Has the IRS verified that the CIA funds were actually disbursed by the Kaplan Fund, Mr. Rogovin?

Mr. ROGOVIN. I believe in response to this question I pointed out that the District Office was not aware of any relationship between the CIA and the Kaplan Fund.

The CHAIRMAN. When was that information given to you—that the District Office had not verified—that they had no knowledge of it at the District Office?

Mr. ROGOVIN. I have never advised the District Office of any relationship, and I do not believe the CIA has, and I do not believe that the Kaplan Fund has, so that to the best of my knowledge until you made the disclosure, public disclosure, some minutes ago, it was unknown; and, as a consequence—

The CHAIRMAN. Do you know, Mr. Harding, whether or not the National Office, the office that you have charge of now, as Acting Com-

missioner—has verified that the CIA funds were actually disbursed by the Kaplan Fund? You have not gone into that at all?

Mr. HARDING. No, sir; I have not.

The CHAIRMAN. You have no knowledge of it?

Mr. HARDING. I have no knowledge of it.

The CHAIRMAN. What method did the IRS use to verify whether the CIA funds were actually disbursed by the Kaplan Fund? Mr. Rogovin, do you know anything about that?

Mr. ROGOVIN. Yes, sir. As I pointed out, the District Office would examine the Kaplan Fund in the same fashion that they examine any other charitable foundation. They did not—they were not aware that there was such a thing as CIA funds.

Now, I would think that the CIA would be a good organization to question as to what methods they used to verify to see that their funds were used to support the projects that they are interested in. But the Revenue Service did not make any special efforts because the District was not aware of the significance of one set of dollars as compared to another set.

The CHAIRMAN. I assume that you would be dealing with the right people who would have knowledge of it at CIA, and I assume that those people would be the two whose names you have mentioned earlier, including, first, the general counsel.

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. I have here the tax returns of the J. M. Kaplan Fund for the years 1961, 1962, and 1963. I shall hand you these tax returns for your inspection, and we will recess for fifteen minutes in order to give you an opportunity to examine them. Please examine the income and contributions received columns and then tell us where you find receipt of CIA funds. We will take a recess for, say, fifteen minutes.

(At this point a short recess was taken.)

The CHAIRMAN. Have you concluded looking over it, Mr. Harding?

Mr. HARDING. I have, Mr. Chairman.

The CHAIRMAN. Do you find any information there which would lead you to believe that any funds have been received from the CIA or any government agency?

Mr. HARDING. As you might expect, Mr. Chairman, I see no indications of any CIA money on the returns.

The CHAIRMAN. And those are for what years?

Mr. HARDING. Form 990-A for 1961, 1962 and 1963.

The CHAIRMAN. Well, Mr. Rogovin has not returned—

Mr. HARDING. Yes, sir; he will be right back.

The CHAIRMAN. I think I would like him to be here when I make the next short statement preceding a question.

Are you ready to proceed, Mr. Rogovin? Are you ready for us to proceed?

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. A few days after our hearing of August 10, Mr. George Cary, who described himself as assistant legislative counsel of the CIA, called on me. Mr. Cary stated that the J. M. Kaplan Fund

had been used as a conduit for channeling CIA funds but he knew very little about it. Mr. Cary said he wasn't sure of the dates but he guessed that the CIA-Kaplan Fund-IRS arrangement was made in 1960 and terminated in 1962. According to Mr. Cary, this was all he knew about the arrangement. Hence, his visit to me didn't make much sense.

I suggested that Mr. Cary also speak with Mr. Olsher. Mr. Cary transmitted to Mr. Olsher the same earth-shaking information but promised to phone-in the month and year in which the CIA-Kaplan Fund-IRS arrangement was made, as well as the month and year of termination of the arrangement. A couple of weeks later, on August 25, Mr. Cary phoned Mr. Olsher to tell him that it appears as though the CIA-Kaplan Fund-IRS arrangement was made in 1959 and terminated in 1964. He did not know the month in which the arrangement was made or the month in which it was terminated. Mr. Cary also said that he thought Messrs. Rogovin, Dunlap and Worley of the IRS handled the original arrangement, but the latter two gentlemen were no longer with the IRS. When Mr. Olsher indicated that he (Cary) was to give him the month and year of the arrangement and the month and year of the termination, Mr. Cary answered that he had misunderstood Mr. Olsher but would obtain the information. Nothing has been heard from Mr. Cary since then. Now then, who is Mr. Cary, Mr. Rogovin?

Mr. ROGOVIN. I have only spoken with Mr. Cary on one occasion, and he identified himself as assistant legislative counsel for the CIA. That is the only knowledge I have.

The CHAIRMAN. I did not quite understand. As what?

Mr. ROGOVIN. I believe as assistant legislative counsel.

The CHAIRMAN. On the Hill or off the Hill?

Mr. ROGOVIN. I do not know where his specific duties are.

The CHAIRMAN. You do not know him?

Mr. ROGOVIN. I have only spoken to him on the telephone, and that was for a brief conversation.

The CHAIRMAN. Now, these two gentlemen here who were mentioned by Mr. Cary—Mr. Dunlap and Mr. Worley—they are not with the IRS any longer?

Mr. ROGOVIN. That is correct; they are retired.

The CHAIRMAN. Are they around Washington?

Mr. ROGOVIN. I do not know, sir.

The CHAIRMAN. Do you know if they had any contacts with the CIA preceding the time that you were contacted by the CIA?

Mr. ROGOVIN. I am not sure. I do not know, sir.

The CHAIRMAN. Either one of them?

Mr. ROGOVIN. I do not know.

The CHAIRMAN. Who in the IRS asked Mr. Cary to see me, do you know that?

Mr. ROGOVIN. I spoke to Mr. Miskovsky after our last session and advised him of the questioning and what I had spoken to you in confidence about. And repeated what you had at that time said: in essence, that if they wanted to come and talk to you you would listen, but that you had no—

The CHAIRMAN. That is right, I did that, too, and I considered it confidential. But when they did not come forward with a person who is in a position to give me information, and when they promise to furnish information which they never follow through with—then, I feel that they are trifling with me and I no longer have any obligation to them. They failed to furnish the necessary information earlier, and they have not yet come through with it.

Mr. ROGOVIN. I am sure if Mr. Olsher has called or requested additional information they would have been as cooperative as possible.

The CHAIRMAN. Well, not only did Mr. Cary call me, but he also called Mr. Olsher. Mr. Cary called Mr. Olsher, and Mr. Olsher inquired about certain information which was to be furnished by Mr. Cary—none of which has been submitted either to Mr. Olsher or to me. It seems to me that this purported or alleged CIA-Kaplan Fund arrangement is being used as a gimmick or diversionary tactic for the purpose of attempting to stop this Subcommittee from proceeding further on the subject of the Kaplan Fund.

I would give very careful consideration to the need for secrecy in this matter if the CIA or the IRS had presented information which was meaningful and could be relied upon. But, when the information furnished by the IRS and CIA consists solely of a hint that I had better not touch this because it involves foreign operations of the CIA, this can hardly be classed as convincing evidence that secrecy is required.

Additionally, our study of the J. M. Kaplan Fund's operations indicates a large possible tax liability as well as violations of Treasury regulations and abuse of its public trust, including self-dealing to the detriment of the Fund's stated charitable purposes. Moreover, the Congress provides the funds for CIA operations and has the responsibility to see that the funds are properly disbursed and adequately supervised. I, personally, have the conviction that the expenditure of public funds is the public's business.

The following is information I should like to have you submit for this record respecting The Gotham Foundation, Michigan Fund, Andrew Hamilton Fund, Borden Trust, The Price Fund, The Edsel Fund, The Beacon Fund and The Kentfield Fund:

Addresses.

Names and addresses of the officers, directors, or trustees at the close of each of the years 1951 through 1963.

Copies of exemption application (Form 1023) and supporting documents, including subsequent amendments.

Copy of letter of Internal Revenue Service granting exemption.

Copy of charter or articles of incorporation (if the foundation is not a corporation, please submit a copy of the trust instrument).

Copies of Form 990-A (or Form 1041-A, if applicable), including attachments filed with the Internal Revenue Service for each year beginning 1951.

Also, please advise as to (a) the years, beginning with 1952, during which the Internal Revenue Service performed field audits of each foundation; (b) the years covered in each such audit; (c) taxes assessed, if any, by the Internal Revenue Service.

For your guidance, the contributions received by the J. M. Kaplan Fund from the above organizations during the years 1961 through

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1963 are shown below. The addresses of these donors do not appear on the Fund's tax returns, despite the fact that such information is required by Treasury regulations.

<i>Donor</i>	<i>Year</i>	<i>Amount</i>	<i>Donor</i>	<i>Year</i>	<i>Amount</i>
Gotham Foundation---	1961	\$83,000	Andrew Hamilton		
	1962	-----	Fund-----	1961	\$62,950
	1963	-----		1962	-----
		83,000		1963	-----
		=====			62,950
Michigan Fund-----	1961	63,000	Borden Trust-----	1961	50,000
	1962	-----		1962	-----
	1963	-----		1963	90,000
		63,000			=====
		=====			140,000
The Price Fund-----	1961	\$50,000	The Beacon Fund-----	1961	-----
	1962	75,000		1962	\$30,000
	1963	60,000		1963	100,000
		185,000			=====
		=====			130,000
The Edsel Fund-----	1961	-----	The Kentfield Fund-----	1961	-----
	1962	80,000		1962	35,000
	1963	50,000		1963	95,000
		130,000			=====
		=====			130,000

The CHAIRMAN. Will you submit the addresses right away, in other words, by tomorrow, and the rest of it can come later on? But we want all the information. Are you in a position to furnish that, Mr. Harding?

Mr. HARDING. I am not sure where these returns are, Mr. Chairman, at the moment. I will certainly do my very best, we will certainly do our very best, to give you all the information we can as soon as possible.

The CHAIRMAN. The addresses you would certainly be able to give.

Mr. HARDING. If we can locate the returns.

The CHAIRMAN. Shouldn't there be some reference to them in the National Office? I thought you had a file on all exempt organizations.

Mr. HARDING. This is true since 1962. From that date we started accumulating copies of returns in the National Office.

Mr. ROOSEVELT. You would have an address for them in the National Office.

Mr. ROGOVIN. To the extent they are exempt organizations. They may well be private trusts that are not charitable trusts.

The CHAIRMAN. But any of them that are exempt organizations you would have them?

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. And the others, if you have them, you will furnish them, let us say, by tomorrow—just the addresses?

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. All right; fine.

(The information concerning the eight foundations was furnished to the subcommittee in executive session.)

The following are among the questions I asked you during our hearing of August 10:

Has the IRS examined the movement of funds between Mr. Kaplan and the Foundation to determine whether such activities were engaged in for the purpose of obtaining certain tax advantages for Mr. Kaplan?

Would you agree that Mr. Kaplan has engaged in self-dealing with his Fund?

What were the reasons for the substantial borrowing that took place between the Fund and Mr. Kaplan or the companies controlled by him?

Would you agree that the Fund has made speculative investments in companies operating at losses, paying little or no dividends, and whose stocks have poor marketability?

Would you say that the investments made by the Fund are typical of those which a trustee of a charitable foundation usually makes in order to preserve the principal and to secure reliable income?

If these speculative investments cannot be considered as desirable for a charitable foundation, would you agree that the size of such investments by the Fund indicate that the basic intention may have been not one of investment but rather an attempt to create business opportunities for Mr. Kaplan through the utilization of the Fund's assets? For example, the Lee National Corporation has a very thin market and has not paid dividends since early 1962. The Illinois Brick Company is listed only on the Midwest Stock Exchange and has a small amount of trading.

In your view, what is the justification for a foundation making this type of investment?

Would you agree that the Fund's business activities may have operated to the detriment of its primary purposes?

You answered these questions by stating that the Kaplan Fund is under continuing investigation by the IRS and you preferred not to comment on these matters while you are investigating them.

What is the scope of the IRS investigation of the Kaplan Fund? In other words, what has the National Office of the IRS been investigating since it became involved in this matter in 1958?

Mr. HARDING. Mr. Chairman, the scope of the investigation of the Kaplan Fund is to determine whether or not it shall continue as an exempt organization. The examination is not being made by the National Office but is being made by our New York District Office.

The CHAIRMAN. Mr. Harding, the recommendation to revoke the tax exemption of the Kaplan Fund was made in 1957 and repeated again in 1958. The case was sent to the National Office in 1958. Now—6-7 years later—you tell us that you are still investigating, investigating, and investigating. Why should it take six years to pass on something like that?

Mr. HARDING. Well, Mr. Chairman, as I recall, the final determination, the last determination, made by our Third District Director, Mr. Moe, was that the organization did retain its exempt status.

The CHAIRMAN. When was that; what year was that?

Mr. HARDING. I believe it was in the chronology that you presented for the record, Mr. Chairman. We can look it up.

The CHAIRMAN. Apparently, you didn't rely upon Mr. Moe's recommendation or you would not have had a continuing investigation since that time.

Mr. HARDING. We have some additional information, Mr. Chairman, as you will recall; we discussed that privately.

The CHAIRMAN. Do you have the conclusions of the recommendations made by the District Director in 1957 and 1958? Do you have them with you?

Mr. HARDING. No, sir; I do not. We did see copies of their letters.

The CHAIRMAN. I think we have all of them, and also the one where Mr. Moe, the Director, recommended against revoking the tax exemption, I believe, in 1960.

Is the IRS investigating the reasons for the National Office approval of District Director Moe's recommendations of March 20, 1960?

Mr. HARDING. The reasons for the National Office approval?

The CHAIRMAN. Yes, did you actually approve it?

Mr. HARDING. Yes, sir; that was done.

The CHAIRMAN. How long did it take you to approve it?

Mr. HARDING. I do not recall the dates on that, Mr. Chairman.

The CHAIRMAN. Well, was it a few weeks or a few months?

Mr. HARDING. Well, the case was in process for several years, as you will recall, with two denial letters and one approval letter, all of those having been subject to National Office review.

The CHAIRMAN. And you are investigating that now?

Mr. HARDING. Yes, indeed, sir.

The CHAIRMAN. Mr. Roosevelt.

Mr. ROOSEVELT. The 1957 and 1958 recommendations were overruled, I believe, in 1960, is that correct, by the National Office?

Mr. HARDING. My recollection, Mr. Roosevelt, is that the District Director came in a third time for technical advice to the National Office. He received technical advice, and on the basis of that advice he issued an approval letter.

Mr. ROOSEVELT. Is there any record of what that advice was?

Mr. HARDING. Yes, sir.

Mr. ROOSEVELT. Can you submit that for the committee?

Mr. HARDING. That was part of the material to be submitted, Mr. Roosevelt, in response to your request, and added to the record. That has not been submitted as yet.

Mr. ROOSEVELT. That has not been submitted?

Mr. HARDING. No, sir; it has not.

Mr. ROOSEVELT. What has happened to it? That was three weeks ago.

Mr. HARDING. I am sorry, Mr. Roosevelt. I have been on vacation and, with the Chairman's agreement, I was allowed to withhold the submitting of that additional information until after I returned and had an opportunity to review the work of the staff done in my absence, and I returned to work this morning.

Mr. ROOSEVELT. Since I have been away a week myself, I guess I cannot criticize that.



(The information submitted by the IRS, under date of October 2, 1964, appears on page 196. Also, see Exhibits 12 through 25, pages 312-342.)

The CHAIRMAN. Is the IRS investigating possible tax liabilities of the J. M. Kaplan Fund, Mr. Kaplan personally, or Kaplan-controlled enterprises?

Mr. HARDING. I am not aware, sir, of whether we have investigations going on the taxable entities or not.

The CHAIRMAN. But you have it on the Fund?

Mr. HARDING. On the Fund; yes, sir.

The CHAIRMAN. The others would be somewhat related, would they not?

Mr. HARDING. They might be related; yes, sir.

The CHAIRMAN. If they were related, I wish you would point it out.

Mr. HARDING. Yes, sir. If there is something in the Fund's investigation which disclosed personal liability.

The CHAIRMAN. For what years is the IRS investigating possible tax liabilities of the J. M. Kaplan Fund, Mr. Kaplan personally, or the Kaplan-controlled enterprises? What years are you investigating, we will first say, the J. M. Kaplan Fund?

Mr. HARDING. We are looking into all of the open years. As you will recall, Mr. Chairman, this was a question we did not resolve at the last hearing as to which years were open, but we will have all open years examined during the investigation.

During our hearing of August 10, I pointed out the following to you:

Mr. Donald R. Moysey, District Director of Lower Manhattan, recommended that the Fund's tax exemption be revoked retroactively. We also know that, by letter of January 7, 1958, Mr. Raphael Meisels, successor to Mr. Moysey, upheld the latter's recommendation that the Fund's tax exemption be revoked "retroactively and progressively."

Then by letter of March 24, 1960, Mr. Kenneth W. Moe, District Director of the Lower Manhattan District and successor to Mr. Meisels, overrode the recommendations of the two previous District Directors, and advised the Kaplan Fund that its tax returns for the years 1952 through 1956 "will be accepted as filed," and that the Fund "was exempt from Federal income taxes for such years".

The CHAIRMAN. Mr. Moe's letter of March 24, 1960, to the Kaplan Fund gives no indication of why the Fund's tax returns were accepted as filed for the years 1952 through 1956. You stated that you would supply for this record the reasons for the IRS decision that the Fund "was exempt from Federal income taxes for such years". You may now give us that information.

Mr. HARDING. Mr. Chairman, as I just pointed out, I have only returned to the office this morning, and I have not had an opportunity to review that information. I will supply it in accordance with our agreement for your record.

The CHAIRMAN. Can you do that pretty soon, Mr. Harding?

Mr. HARDING. Just as soon as I have an opportunity to get to my desk, sir, and review the material that was prepared in my absence.

The CHAIRMAN. Yes. We were very glad to agree that you would have time for your vacation, and that you would return today. I thought possibly you would have somebody in the office working on it during your absence, and you would just have to look it over after you had got back.

Mr. HARDING. We have had people working on it during my absence, sir, but I have not had an opportunity to review the material.

(Following is the information submitted by the IRS under date of October 2, 1964. Also, see Exhibits 12 through 25, pages 312-342:)

The District Director, Lower Manhattan, New York, initially asked for advice and comments of the National Office on August 7, 1956 with respect to certain transactions which in his opinion formed a basis for a recommended revocation of the exempt status of The J. M. Kaplan Fund, Inc.

The National Office wrote to the District Director on December 31, 1956, indicating agreement, but suggesting that certain aspects of the case be more fully developed. It was also suggested that the District Director follow the established procedures which provide for the organization to be notified of a proposal to recommend revocation of its exempt status and to be given the opportunity to a conference in the District office, as well as to file a brief in answer to the proposed recommendation, indicating whether a conference in the National Office might be desired prior to the issuance of any adverse ruling.

The District Director sent formal notice to the organization on March 29, 1957, setting forth certain facts and the reasons for his proposed revocation, and offering the organization an opportunity to file a protest within thirty days.

A brief was duly filed by the organization which contended that it was formed and operated exclusively for charitable purposes; that it had been the recipient of benefactions throughout its history with little or no benefits accruing to its creator and donors; that its investment practices had been those normally incident to those of an investment portfolio; and that it had not engaged in prohibited transactions within the meaning of section 503 of the Internal Revenue Code.

By letter dated January 7, 1958, the organization was advised by the District Director that after careful consideration of the brief and a thorough review of the issues involved, it was the continued opinion of his office that the recommendation of revocation was correct and that the file was being forwarded to the National Office for further consideration.

A conference was held in the National Office on July 8, 1958 at which time all aspects of the case were discussed and representatives of the organization were granted the opportunity to file a supplemental brief. The supplemental brief, signed by Mr. J. M. Kaplan on November 19, 1958, set forth, among other things, a schedule of "Bargain Sales" to the organization, showing that only one of these had been claimed as a contribution deduction by the seller; and a schedule of the contribution deductions of the contributors of property to the organization, showing that of non-cash contributions totaling \$14,528,013.18, the donors used as income tax deductions only \$137,112.69. The supplemental brief insisted that this did not represent a situation of a charitable organization formed or used to create contribution deductions for the founder and his related individuals and companies but rather, a charitable organization to which the great bulk of the contributions has been made without regard to tax benefit from contribution deductions and, in large part, without the benefit of contribution deductions at all. In connection with the assets received by the organization as a result of its owning 244,681 shares of Old Welch, Inc., and receiving liquidating distributions, the supplemental brief maintained that the liquidating distributions were capital gain and not accumulation of income subject to the provisions of section 504 of the Code. With regard to its portfolio, the brief asserted that it is a proper exercise of discretion for a charitable organization to determine, as a policy, that its charitable objectives are best served by conservation and enhancement of its capital so as to provide a continuing and increasing amount of income for expenditure in its charitable purposes, and that this had been its policy.

On September 23, 1959, the National Office addressed a memorandum of technical advice to the District Director. He was informed that all of the facts in the case, including the involved and complicated transactions set forth in his letter to the organization had been carefully considered. The National Office

memorandum advised, however, that even though some of the transactions, when viewed separately, may appear to be without the scope of the exemption statute, that in considering whether an organization is organized and operated exclusively for charitable purposes it is necessary to study its entire operations. The memorandum stated that while there is considerable doubt that a charitable purpose is served if an exempt organization is an integral part of a scheme to avoid tax or otherwise serve the private interests of its creators, that in some cases, such may be incidental rather than substantial if the primary purpose is in fact charitable rather than in furtherance of a selfish motive. The memorandum of technical advice to the District Director concluded that upon a review of all the facts in the case, the primary purpose of the organization itself, as evidenced by its operations, was charitable.

The District Director was advised that if he agreed with the technical advice furnished in the matter, the organization should be advised accordingly. If not, the National Office invited further comments.

Thereafter, by letter dated March 24, 1960, the District Director advised the Kaplan Fund that its returns for the years 1952 through 1956 would be accepted as filed.

As has been brought out in the hearing record, there is currently pending a recommendation by the District Director that the Fund's exempt status be revoked for the years 1958, 1959 and 1960. In consideration of the current case, the position taken by the National Office in the technical advice memorandum of September 23, 1959 is being reexamined, along with an examination of the findings in pertinent court decisions, rulings, etc., since that date. (IRS letter, October 2, 1964.)

The CHAIRMAN. During our hearing on August 10 I asked you the following question: "Does the fact that Mr. Moe overrode the prior recommendations of the District Director in 1960 mean that the National Office of the IRS cannot do anything about any tax liability that may exist for the years 1952 through 1956?" In other words, does the statute of limitations kill any possibility for assessing taxes for those years? You stated that you did not know the answer to that question but that you would submit it for the record at this hearing. You may now supply that information.

Mr. HARDING. I am in the same position on this as in all the other material, Mr. Chairman.

The CHAIRMAN. We would like to have this as soon as we can, Mr. Harding. Would, say, Wednesday morning be unreasonable?

Mr. HARDING. This open year question?

The CHAIRMAN. Yes, sir.

Mr. HARDING. Yes, sir. I think we can probably get that for you tomorrow.

The CHAIRMAN. Tomorrow would be better, if you please.

(Following is the information submitted by the IRS under dates of September 1, 1964 and October 12, 1964. Also see Exhibits 12 through 25, pages 312-342.)

With regard to the J. M. Kaplan Fund, Inc. of New York, N.Y., the statute of limitations has expired on returns filed by the Fund for the years 1954, 1955, 1956 and 1957 pursuant to the provisions of section 6501(g)(2) of the Internal Revenue Code of 1954. There was, however, no provision corresponding to section 6501(g)(2) in the prior Code and it has been held that the filing of an information return for years prior to 1954 by an organization believing itself to be exempt did not start the running of the statute of limitations. Thus, returns filed by the Kaplan Fund for the years 1952 and 1953 would still be open for assessment.

Returns for the years 1958, 1959, and 1960 are those presently under audit, and they are open for assessment to June 30, 1965 under consents extending the statute of limitations filed by the Fund. Returns for the years 1961, 1962 and 1963 are, of course, open under the normal three year period of limitations to May 15, 1965, 1966, and 1967, respectively. (IRS letter, September 1, 1964).

The Service audit of the returns for the J. M. Kaplan Fund for the years 1958 and 1959 commenced in January 1961 and its returns for the years 1960 and 1961 were later added to the audit. The scope of this audit also includes consideration of all the matters on which you have reported or raised questions. Completion of this audit is anticipated on or about December 31, 1964. (IRS letter, October 12, 1964).

The CHAIRMAN. I understand Mr. J. M. Kaplan and affiliated foundations, as well as several Kaplan-controlled enterprises have had substantial stock trading accounts in New York City. Has the IRS examined the stock trading accounts of Mr. J. M. Kaplan, J. M. Kaplan Fund, Navajo Corporation, Jemkap, Inc., Nivell Corporation, and other Kaplan-controlled enterprises and foundations?

Mr. HARDING. I would assume, Mr. Chairman, that all of these transactions would be incorporated in the investigation currently underway in New York.

(See page 203 and Exhibit 12, page 312 for subsequent response by Acting Commissioner Harding.)

The CHAIRMAN. Mr. Roosevelt.

Mr. ROOSEVELT. Mr. Chairman, I am sorry I was late and missed some of the previous discussion. But I want to go back to some of the statements previously made with reference to the CIA so that I can understand the situation.

Mr. Rogovin, as I understand it, you are the only one now in the Internal Revenue who has any information regarding this arrangement that was supposedly made with the Kaplan Fund and CIA?

Mr. ROGOVIN. Mr. Roosevelt, in partial answer to your question, yes. I am liaison or the point of contact between the CIA and the Revenue Service. But to correct the record, there was no arrangement made regarding any special tax concessions or the like between the three parties involved here.

Mr. ROOSEVELT. So that, if Mr. Cary told the Committee that there was an arrangement, you are not a part of that arrangement and know nothing about such an arrangement?

Mr. ROGOVIN. It would sound to me like a poor choice of words, "arrangement", but I am not a party or aware of any arrangement.

Mr. ROOSEVELT. Are you able to tell us what the discussion was that you had with Mr. Miskovsky, is that how you pronounce his name?

Mr. ROGOVIN. Yes.

Mr. Roosevelt, when mentioning it the first time, I felt there was a certain sense of confidentiality that we might attach to this type of information, and would again like to underscore this. I would be very happy to discuss all of this material with you and the members of the Subcommittee. But I am not sure what the advantage of a public discussion of this would be, so I would leave it to your discretion.

Mr. ROOSEVELT. If counsel for this Committee has had discussions with Mr. Cary, and there is no information so far of a specific nature, is it not proper now that we turn to you and say—if you want to do it confidentially, that is fine—but would you not agree that we should now say to you, "All right, what is the understanding,"—or if you do not like the word "arrangement"—what is the understanding that you have on this matter and the materials affected?

Mr. ROGOVIN. Certainly, it is a very appropriate question, and I would be most happy to discuss it with you and the members of the

Subcommittee. But I would respectfully suggest that we not do it in public hearing.

Mr. ROOSEVELT. Well, Mr. Chairman, I would then like to ask that Mr. Rogovin be asked to do that this afternoon at the earliest possible time.

The CHAIRMAN. You mean at a private meeting?

Mr. ROOSEVELT. A private meeting with counsel, yourself, of course.

The CHAIRMAN. And yourself.

It is possible we can conclude before twelve o'clock in time to do that.

Mr. HARDING. Mr. Chairman, I would respectfully suggest if such a meeting is held that the CIA be represented at that meeting. I am a little concerned that the Revenue Service divulge information even to this Committee which has been given to us in confidence by the agency.

Mr. ROOSEVELT. Mr. Rogovin, in the questions that the Chairman has already given you with respect to the list of foundations starting with the Gotham Foundation and ending with Kentfield Foundation, the Kentfield Fund, where there is an omission, as there is in this case, of the addresses of these foundations would you normally have done something to see that these residences were filled in?

Mr. ROGOVIN. In the audit of an exempt organization one of the points of interest to the agent would be where the money comes from, and to the extent that the return does not reflect the information, I would assume that the agent would specifically ask the donee recipient who these organizations are, and where they are. While this is tangential to his examination, it is further information that the Service, in general, would be interested in, so it would be part of the audit to ask for the information.

Mr. ROOSEVELT. It is required by the Treasury regulations.

Now, therefore, if it was not on the form as submitted to the Treasury, is it not then information which would be on the examining agent's form or materials, in some way within his material?

Mr. ROGOVIN. I would assume he would ask for it in the conduct of a field examination. He starts with the return, but he goes to the books and records of the foundation, and to the extent that the names of these donors and the address of the donors are not on the return, they may well be in the books and records of the foundation. And if it is not, he would ask for them. An appropriate notation, I assume, would be in his work papers.

Mr. ROOSEVELT. What I am getting at is we have asked you for the addresses. You have said that you might not be able to supply them unless they were tax deductible foundations or funds. What I am getting at is that I do not think that is so, because if the agent had done what is required of him by Treasury regulations, he certainly must have gotten that information when in eight instances Treasury regulations had been ignored and the addresses were not present. If these are dummy corporations or if they are for some other reason corporations which we do not want to talk about anyway, that is fine, tell us. But they must be in your records, and I do not want you coming back here and saying to me, "I am sorry, these are not foundations which are tax exempt, and therefore we know nothing about them."

Your Treasury regulations require you to know something about them; that is right, is it not?

Mr. ROGOVIN. Basically, yes, and we will supply the information by tomorrow morning.

The CHAIRMAN. Now, we will have this meeting this afternoon in my office. Will 4 o'clock be all right, Mr. Harding?

Mr. HARDING. Yes, sir; that will be satisfactory.

The CHAIRMAN. Would that be better than any other hour this afternoon?

Mr. HARDING. It is at your pleasure, Mr. Chairman.

The CHAIRMAN. Will that be satisfactory to you, Mr. Rogovin?

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. We will have it in my office, Room 1136, House Office Building, at 4 o'clock this afternoon.

(The information concerning the eight foundations was furnished to the Subcommittee in Executive Session.)

The CHAIRMAN. Has the IRS examined the stock trading accounts of Mr. Kaplan, the J. M. Kaplan Fund, and other Kaplan-controlled foundations and businesses to determine whether stock trading losses of Mr. Kaplan or of Kaplan-controlled organizations were charged to the J. M. Kaplan Fund or other Kaplan foundations?

Mr. HARDING. Again, Mr. Chairman, I would assume that is part of the investigation in process.

(See page 203 and Exhibit 12, page 312 for subsequent response by Acting Commissioner Harding.)

The CHAIRMAN. Does the IRS have any evidence that stock trading losses of Mr. Kaplan or of Kaplan-controlled enterprises were charged to the J. M. Kaplan Fund or other Kaplan foundations?

Mr. HARDING. We may develop such information. I do not have any such information now, Mr. Chairman.

The CHAIRMAN. You do not have the information yourself at this time?

Mr. HARDING. No, sir. Again I assume that this is part of the investigation.

The CHAIRMAN. Now, that investigation has been going on since 1957 and 1958, you know.

Mr. HARDING. This is the new phase of that investigation.

The CHAIRMAN. New phase of it?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Did the old phase say anything about this or aren't you saying?

Mr. HARDING. I am not aware of it, Mr. Chairman.

(See page 203 and Exhibit 12, page 312 for subsequent response by Acting Commissioner Harding.)

The CHAIRMAN. Mr. J. M. Kaplan and his foundations have been substantial contributors to the New School for Social Research of New York City. Has the IRS examined the records of the School to determine whether it has received grants from Mr. Kaplan or Kaplan-controlled foundations which were to be used for the express purpose of purchasing stock in companies in which Mr. Kaplan was interested?

Mr. HARDING. Again, Mr. Chairman, that would have to be part of this investigation that is under way.

The CHAIRMAN. And you are not in position to answer it at this time?

Mr. HARDING. No, sir; I am not.  
(See page 203 and Exhibit 12, page 312, for subsequent response by Acting Commissioner Harding.)

The CHAIRMAN. Does the IRS have any evidence that the New School for Social Research received grants which were used for the purpose of purchasing stock in companies in which Mr. Kaplan was interested?

Mr. HARDING. The same answer, Mr. Chairman.  
(See page 203 and Exhibit 12, page 312, for subsequent response by Acting Commissioner Harding.)

The CHAIRMAN. Has the IRS examined the records of the New School for Social Research to determine whether it has received grants from Mr. Kaplan or Kaplan-controlled foundations which were to be used for political purposes?

Mr. HARDING. Same answer, Mr. Chairman.  
(See page 203 and Exhibit 12, page 312, for subsequent response by Acting Commissioner Harding.)

The CHAIRMAN. Does the IRS have any evidence that the New School for Social Research received grants from Mr. Kaplan or from Kaplan-controlled foundations which were used for political purposes?

Mr. HARDING. Same answer, Mr. Chairman.  
(See page 203 and Exhibit 12, page 312, for subsequent response by Acting Commissioner Harding.)

The CHAIRMAN. Has the IRS examined the records of the New School for Social Research to determine whether the J. M. Kaplan Fund or other Kaplan-controlled foundations made grants to the school which, in turn, made payments to a relative of Mr. Kaplan's?

Mr. HARDING. Same answers.  
(See page 203 and Exhibit 12, page 312, for subsequent response by Acting Commissioner Harding.)

The CHAIRMAN. Does the IRS have any evidence that the J. M. Kaplan Fund or other Kaplan-controlled foundations made grants to the New School for Social Research which, in turn, made payments to a relative of Mr. Kaplan's?

Mr. HARDING. Same answer, sir.  
(See page 203 and Exhibit 12, page 312, for subsequent response by Acting Commissioner Harding.)

The CHAIRMAN. Has the IRS examined the records of the J. M. Kaplan Fund or other Kaplan-controlled foundations to determine whether any of Mr. Kaplan's personal entertainment bills or household expenses were paid by any of the foundations?

Mr. HARDING. Same answer, Mr. Chairman.  
(See page 203 and Exhibit 12, page 312, for subsequent response by Acting Commissioner Harding.)

The CHAIRMAN. Does the IRS have any evidence that Mr. Kaplan's personal entertainment bills or household expenses were paid by the J. M. Kaplan Fund or by other Kaplan-controlled foundations?

Mr. HARDING. Same answer.  
The CHAIRMAN. Do you actually have the evidence or are you just stating that you do not want to answer until the investigation is over?  
Mr. HARDING. I am stating, sir, that I personally do not know what material is presently available to us in the New York investigation.

The CHAIRMAN. You personally do not possess the information to answer the question?

Mr. HARDING. I personally do not possess the information, sir; and, as we discussed before, I think it would be inappropriate, if I had it, to disclose it during the process of the investigation.

The CHAIRMAN. It is in the file, I assume, one way or the other, either—

Mr. HARDING. It certainly will be in the file, Mr. Chairman, in view of this record.

The CHAIRMAN. But you do not have it yourself and you cannot answer it of your own knowledge?

Mr. HARDING. That is correct.

The CHAIRMAN. And that is part of the file. Are you going to submit that file, have you decided that or not?

Mr. HARDING. I have not had an opportunity to consult with my attorney, sir.

The CHAIRMAN. All right, sir. You can let us know this afternoon at four o'clock.

Mr. HARDING. That will be fine.

(See page 203 and Exhibit 12, page 312 for subsequent response by Acting Commissioner Harding.)

The CHAIRMAN. Has the IRS examined the J. M. Kaplan Fund and other Kaplan-controlled foundations to determine whether Mr. Kaplan has utilized Foundation funds for personal purchases of securities?

Mr. HARDING. Same answer, Mr. Chairman.

(See page 203 and Exhibit 12, page 312, for subsequent response by Acting Commissioner Harding.)

The CHAIRMAN. Does the IRS have any evidence that Mr. Kaplan utilized funds of Kaplan-controlled foundations for personal purchases of securities?

Mr. HARDING. Same answer, sir.

(See page 203 and Exhibit 12, page 312 for subsequent response by Acting Commissioner Harding.)

The CHAIRMAN. Has the IRS examined the J. M. Kaplan Fund or other Kaplan-controlled foundations to determine whether the foundations borrowed money from banks and then loaned the funds to Mr. Kaplan without interest and without notes for the purpose of Mr. Kaplan's personal stock purchases?

Mr. HARDING. Same answer, sir.

(See page 203 and Exhibit 12, page 312 for subsequent response by Acting Commissioner Harding.)

The CHAIRMAN. Does the IRS have any evidence that the J. M. Kaplan Fund or other Kaplan-controlled foundations borrowed money from banks and then loaned the funds to Mr. Kaplan without interest and without notes for the purpose of Mr. Kaplan's personal stock purchases?

Mr. HARDING. Same answer.

(See page 203 and Exhibit 12, page 312 for subsequent response by Acting Commissioner Harding.)

The CHAIRMAN. Has the IRS examined the stock trading accounts of Mr. Kaplan, the J. M. Kaplan Fund, and other Kaplan-controlled



foundations and businesses to determine whether trade or confirmation slips were altered at any time to show a change in ownership?

Mr. HARDING. Same answer, sir.

(See page 203 and Exhibit 12, page 312 for subsequent response by Commissioner Harding.)

The CHAIRMAN. Does the IRS have any evidence that such trade or confirmation slips were altered to show a change in ownership?

Mr. HARDING. Same answer, sir.

(By letter of October 12, 1964, Acting Commissioner Harding advised Chairman Patman that such questions "relate to matters being considered in the Service's audit." Mr. Harding indicated that it would be inappropriate for him "to prejudge the tax consequences of the various transactions" by responding to the questions "at this time." He stated that he would be glad to respond to Chairman Patman's questions "to the extent possible after the audit has been completed and final decisions reached.") (Also, see Exhibit 12, page 312.)

The CHAIRMAN. Does the IRS have any evidence that the Kaplan Fund, at one point, owned a newspaper in Middletown, New York, which had substantial losses?

Mr. HARDING. Same answer, sir.

(See above Harding letter of October 12, 1964, and Exhibit 12, page 312 for subsequent response of Acting Commissioner Harding.)

The CHAIRMAN. What happened to the Kaplan Fund's holdings in that paper?

Mr. HARDING. Same answer, sir.

(See above Harding letter of October 12, 1964, and Exhibit 12, page 312 for subsequent response of Acting Commissioner Harding.)

The CHAIRMAN. At this time, I wish to request that the IRS submit to this Subcommittee by October 12, 1964 a complete written report of its findings relating to the investigation of the J. M. Kaplan Fund. Can you do that, Mr. Harding?

Mr. HARDING. We will do the very best we can, sir. I am not acquainted with the time schedule on this investigation.

The CHAIRMAN. That seems like a reasonable time, does it not?

Mr. HARDING. Well, in view of all the material which you have pointed to, you can see that there is a great deal of investigative matter which is necessary to look at after we can—

The CHAIRMAN. But you have had it since 1957, 1958.

Mr. HARDING. Yes, sir. But not in this current phase, Mr. Chairman.

The CHAIRMAN. Not in this current phase. Mr. Roosevelt?

(See Exhibit 12, page 312, respecting status of IRS report.)

Mr. ROOSEVELT. Mr. Harding, just so that I understand the procedures, can you tell me how you go about closing a period. I have gathered that you closed the investigation that was made on the years that resulted in the adverse findings by the District Office in 1956 and 1957, which was reversed some years later.

What periods are still open now, how and when do you close them, what years can you make a final report on, and which ones are you keeping open?

Mr. HARDING. Well, basically, Mr. Roosevelt, the statute closes the years. After three years the statute runs on that particular year.

Now, there is a way that the statute can be kept open, by consent agreement with the taxpayer, and it was this information which we discussed on the 10th of August at our last hearing, and which I did not have, and which I have agreed to submit for the record, and will get to the Chairman by tomorrow.

Mr. ROOSEVELT. I think what I am getting at is, when you say to the Chairman that you are conducting a continuing investigation, are you then going to tell us that you are still holding all these years open? Are you not going to tell us that you will be able to have a completed file or not ask for a continuation from the taxpayer (or not in this instance a taxpayer, but a party), so that we can know what years are still under investigation and what years are not under investigation?

Mr. HARDING. I think we will find, Mr. Roosevelt, that several of the years that we have been talking about have run, and that we are not in a position to reopen those years. We will——

Mr. ROOSEVELT. Wait a minute. But if they have run, you can answer these question for those years as to whether you did or you did not do the things the Chairman has asked.

Mr. HARDING. Yes, sir; that would be true. But I do not know the date of the transactions which the Chairman referred to. I assume these are recent transactions.

Mr. ROOSEVELT. Let me take an example if it. You would know, for instance, if you had examined whether he was doing certain types of things. That is part of the question. The question is did you examine in those years whether he was getting loans from his foundation, just as an example? Now, certainly for those years you will be able to answer all of those questions, will you not?

Mr. HARDING. To the extent that those items were examined in the years that are now closed and are no longer under investigation.

Mr. ROOSEVELT. Or you can tell us you did not examine.

Mr. HARDING. Yes, sir; or we can tell you that we did not know of that transaction at the time we examined for those years.

Mr. ROOSEVELT. So you will within a few days now be able to tell us which years are still open, which years are closed, and what you have done in the years that are closed and, presumably, in the years that are open. You can then go forward and get the information that the Chairman has asked, because the investigation is still open so that you can make these examinations: is that right?

Mr. HARDING. If I understand your question, Mr. Roosevelt, for those items which the Chairman has mentioned, which are involved in open years, this is under an investigation, and as soon as we have completed that investigation we will be in position to respond to those questions.

Mr. ROOSEVELT. If any information has been available to you for roughly a period of two years or slightly more, it would then be reasonable to expect that you would have by now, even with a continuing investigation, been able to find out whether that information was valid or not; isn't that correct?

Mr. HARDING. Some of that information should have been verified one way or the other by now; yes, sir.

Mr. ROOSEVELT. So that if we have reason to believe you had that information for two years, we could perfectly properly ask you what you have done about this information.

Mr. HARDING. In the larger view of things, however, Mr. Roosevelt, as long as we are investigating a taxpayer to determine whether or not his tax exemption may continue, we feel that it would be inappropriate to publicly disclose details of that investigation until the culmination of that investigation has been reached, and we have made a decision as to whether or not the tax exemption is to be revoked or is to be continued. This is my basic reservation.

Mr. ROOSEVELT. Then you really are conducting two kinds of an investigation—one on the year-to-year basis of the individual returns, and the other as to whether or not the exemption should be allowed to remain.

Now, how long are you going to take to decide that?

Mr. HARDING. There are not really two investigations, Mr. Roosevelt.

Mr. ROOSEVELT. Two types of investigations.

Mr. HARDING. These are annual investigations of transactions conducted by the Fund. The purpose of the investigation, unlike an income tax investigation, however, is not to determine tax liability basically, but to determine whether or not the taxpayer has conducted his organization according to the law. If we find to the contrary, the penalty we have is revocation of the exemption rather than assessment of tax, ordinarily.

Mr. ROOSEVELT. I was getting down to what the exact meat of the situation is, Mr. Harding. If you are examining returns for the year 1960 to try to find out whether this foundation has conducted itself in a manner that warrants its continuing exemption as an organization, certainly it should not be allowed to continue for four or five more years during which you simply go on with an interminable examination, while the foundation can continue all the things it has been doing in the past.

Certainly it seems to me reasonable that the phase regarding whether the foundations are conducting themselves lawfully and are, therefore, properly entitled to their exemption, should have a time limit on it.

Mr. HARDING. Yes, sir; and the time limit is our ability to conclude the investigation, reach a decision, and I assure you that that will be as expeditiously done as humanly can be.

Mr. ROOSEVELT. Expeditiously does not mean so much. I have seen things go through the court expeditiously in nine years. If we can show you—if you want to do it in private session, executive session, that is one thing—that you have had information for two years which raised a very serious question as to whether or not this foundation was acting legally and lawfully, I think this Committee would have a right to severely censure the Internal Revenue Service if it were not able within two years to decide whether this foundation should have its exemption removed. Isn't that fair?

Mr. HARDING. I think a two-year period for examination is quite adequate, Mr. Roosevelt.

I am not altogether sure, however, whether we undertook that investigation at the time we got the information, which you imply we had two years ago. We have quite a number of examinations to schedule and, as we discussed at our last session, we have limited personnel for the purpose of making those investigations, and precisely when we undertook this current phase of the investigation would, I

think, be a fairer measure of the time necessary to complete it than the time in which the information first became available.

Mr. ROOSEVELT. Will you submit to us the date when you did begin? We know when you received this information. We would like to know when you began.

Mr. HARDING. Yes, sir. I will be glad to submit to you the date on which we undertook this current phase of the Kaplan audit.

Mr. ROOSEVELT. Thank you. Thank you, Mr. Chairman.

(See page 197, IRS letters of September 1, 1964, and October 12, 1964.)

The CHAIRMAN. During our hearing of August 10, you stated that the IRS had approved 9,735 applications for tax exemption during fiscal year 1963. How many foundation applications for exemption were approved during fiscal year 1963?

Mr. HARDING. I gave you calendar figures, as I recall, Mr. Chairman.

The CHAIRMAN. The question was how many foundations among that number were approved during fiscal year 1963.

Mr. HARDING. 1,395, sir.

The CHAIRMAN. During our hearing of August 10, I asked you to submit the following information: (a) Number of individuals who made gifts and bequests of \$1 million or more during 1962; (b) The aggregate value of all such gifts and bequests.

Do you now have that information for this record, Mr. Harding, or do you want time to look it over?

Mr. HARDING. I have the information, the information has been accumulated, Mr. Chairman. I would like to look it over before I submit it to your Committee.

The CHAIRMAN. All right, sir, you can submit it some time within the next—some time tomorrow.

Mr. HARDING. At the very earliest we will submit it.

(Following is the information submitted by the IRS under date of September 1, 1964.)

*Federal gift and estate tax returns filed during 1963 reflecting charitable, public, and similar gifts and requests more than \$1,000,000*

Size of total charitable, public and similar gifts and bequests	Total		Gift tax returns		Estate tax returns	
	Number	Amount	Number	Amount	Number	Amount
	(1)	(2)	(3)	(4)	(5)	(6)
Total.....	179	\$498, 123, 813	42	\$133, 575, 826	137	\$364, 546, 987
\$1,000,000 under \$1,500,000.....	66	80, 281, 573	14	16, 598, 419	52	63, 683, 154
\$1,500,000 under \$2,000,000.....	50	85, 750, 911	12	21, 380, 105	38	64, 390, 806
\$2,000,000 under \$3,000,000.....	21	50, 383, 122	7	16, 439, 679	14	39, 943, 443
\$3,000,000 under \$4,000,000.....	10	35, 225, 208	1	3, 259, 063	9	31, 966, 145
\$4,000,000 under \$5,000,000.....	12	55, 715, 471	2	8, 846, 130	10	46, 866, 241
\$5,000,000 under \$10,000,000.....	15	108, 626, 943	4	31, 893, 783	11	76, 723, 160
Over \$10,000,000.....	5	82, 140, 285	2	35, 174, 647	3	46, 965, 638

NOTE.—The data are based on unaudited gift tax returns (Forms 709) and estate tax returns (Forms 706) filed during 1963. The gift tax returns of a husband and wife who split their gifts are treated as one. Amounts classified are totals of charitable, public, and similar gifts and bequests on returns (or pairs of split-gift returns).

Source: Internal Revenue Service, Statistics Division, August 1964.

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The CHAIRMAN. During our hearing of August 10, you were requested to furnish us the following information: Six examples of cases where contributions to foundations have been made for business purposes; six examples of actual or potential conflict of interest situations; a few examples of instances where a foundation's services, such as research, market studies, etc., have been made available to certain businesses on a preferential basis; six examples where foundation funds have been made available to certain businesses on a preferential basis; six examples where foundation funds have been used to grant benefits to company employees.

Do you have that information available or would you like to look it over before you submit it?

Mr. HARDING. It is being worked on, Mr. Chairman. This part of your material was a little bit more difficult to accumulate, as you can imagine, and it may take us a few more days to get this to you.

(The information submitted by the IRS, under date of October 2, 1964, appears on pages 166-168 and 175-177.)

The CHAIRMAN. During our hearing on August 10, I asked you whether you were familiar with any instances where individuals who are board members of foundations also sit on the boards of competing companies. Since I seemed to be unable to get through to you on that question, I shall now rephrase it by citing an example: Messers Smith and Jones sit on the board of a foundation, and also sit on the boards of business firms that compete with each other. Do you know of any such cases, Mr. Harding?

Mr. HARDING. No; I do not.

The CHAIRMAN. During our hearing of August 10, you were asked to advise us whether the Leonard C. Hanna, Jr. Fund of Cleveland, which was liquidated on January 18, 1963, has complied with all statutory requirements. Do you now have that information?

Mr. HARDING. That is part of the information which I will submit to you, sir.

The CHAIRMAN. That was prepared for you during your absence, and you have not had time to look it over?

Mr. HARDING. Yes, sir; that is correct.

(Following is the information submitted by the IRS under dates of October 2, 1964 and October 26, 1964. Also, see Exhibits 6 and 12, pages 302 and 312.)

The final return filed by the Leonard C. Hanna, Jr. Fund contained all required information except for the schedule supporting compensation paid its officers. This schedule has been secured and has been attached to the return. (IRS letter, October 2, 1964.)

We understood your question to be whether the Hanna Fund had complied with all statutory requirements in filing its final return and, as reported in our letter of October 2, 1964, all requirements were met in this respect except for the schedule supporting compensation paid its officers.

It is now assumed that you were asking whether the Fund had complied with all statutory requirements with respect to its activities as an exempt organization. The Service has not completed its consideration of the Fund's operations and we are not in a position to respond to the broader question at this time. (IRS letter, October 26, 1964.)

The CHAIRMAN. During our hearing of August 10, I asked you to furnish for this record a copy of the letter from the Stephens Foundation of Nashville, or from its accounting firm, which indicates the Foundation's intent to have the IRS make the information available to public inspection. You stated that you would furnish us such a letter from the Foundation's accounting firm. Do you have that letter now, Mr. Harding?

Mr. HARDING. I have had an opportunity to look at that letter, Mr. Chairman. It is very short, and I will be happy to submit it for the record at this time.

The CHAIRMAN. All right, sir.

(The documents submitted by the IRS follow:)

PRICE WATERHOUSE & Co.,  
Nashville, August 11, 1964.

Mr. JAMES A. O'HARA,  
District Director, Internal Revenue Service,  
Nashville, Tenn.

DEAR Mr. O'HARA: This is to confirm the oral advice furnished your office in connection with the income tax return form 990-A for Stephens Foundation, Inc., for the fiscal year ended June 30, 1963. It was intended that the listed names of donors be included in the information to be made available to the public.

If we can be of service in any other way please call on us.

Yours very truly,

RAYMOND N. FOUST.

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
Washington, D.C., September 21, 1964.

HON. WRIGHT PATMAN,  
Chairman, Subcommittee Foundation Study, Select Committee on Small Business,  
Longworth Building, Washington, D.C.

DEAR Mr. PATMAN: In your letter of September 16, 1964, to Mr. Harding, you asked to be advised as to the date on which Price Waterhouse & Co. advised the IRS that the list of donors attached to the Form 990-A for the Stephens Foundation, Inc., for the fiscal year ended June 30, 1963, would be open to public inspection.

This is to advise that Mr. Mitchell Rogovin, Assistant to the Commissioner, called our District Director's office in Nashville, Tenn., in this regard by telephone on July 21, 1964. The Director's office called back the same day to advise that Price Waterhouse & Co. had been contacted and had advised as indicated above. This oral advice was confirmed by Price Waterhouse in their letter of August 11, 1964, to the District Director and the letter was furnished you by Mr. Harding at the hearing of your subcommittee on August 31, 1964.

Sincerely,

DONALD W. BACON,  
Acting Commissioner.

The CHAIRMAN. During our hearing of August 10, I stated that the Foundation Library Center made a so-called "promotional mailing" of 2,764 copies of its publication, Foundation News, and requested that you advise us as to what the Foundation Library Center was promoting and to whom this promotional mailing was sent. Do you have that information?

Mr. HARDING. I have a letter from the Foundation Library, Mr. Chairman, if I can put my fingers on it, which I did have an opportunity to read before I appeared this morning, and I will be glad, if I can find it here, to submit it.

The CHAIRMAN. You may submit it for the record.  
(The information submitted by the IRS follows:)

THE FOUNDATION LIBRARY CENTER,  
New York, N.Y., August 12, 1964.

Mr. WADE F. HOBBS,  
Internal Revenue Service Building,  
Washington, D.C.

DEAR Mr. HOBBS: One of the few pleasures of a rather dreary Monday was the chance to renew my acquaintance with you.

With reference to the "promotional mailing" of the January 1963 issue of *Foundation News* we report as follows:

Free copies of this issue were sent to two lists, so that they might determine from actual examination whether *Foundation News* was a publication to which they ought to subscribe.

(1) Libraries: large public, college, governmental, excluding those already subscribing.

(2) Trust officers of banks, selected to include those presumed to be concerned with charitable trusts.

We do not have separate totals of these lists, but the complete total was 2,764.

Cordially,

F. ELMER ANDREWS, *President*.

The CHAIRMAN. Did the Longwood Foundation of Wilmington, Delaware have an audit in any year beginning 1960? If the answer is in the affirmative, what years were covered?

Mr. HARDING. I will have to supply that for the record, sir. I do not recall.

(Following is the information submitted by the IRS under date of October 2, 1964:)

The Foundation was examined for the fiscal year ending September 30, 1961. The examination was initiated October 8, 1962, and completed June 26, 1964. (IRS letter, October 2, 1964.)

The CHAIRMAN. This was the first audit of the Longwood Foundation during the period of our study, which begins with 1951, is that correct?

Mr. HARDING. This is one of the foundations on your list, Mr. Chairman?

The CHAIRMAN. Yes, sir.

Mr. HARDING. And those were all audited, and I do not recall a previous audit of that foundation.

The CHAIRMAN. Did the IRS find any violations by Longwood respecting its responsibilities as an employer or respecting its operations as a charitable foundation?

Mr. HARDING. I would have to supply that for the record, Mr. Chairman.

The CHAIRMAN. You do not personally remember that or have knowledge of it?

Mr. HARDING. No, sir; I do not.

(Following is the information submitted by the IRS under date of October 2, 1964:)

We found certain travel expenses and a portion of the use of foundation staff cars by certain employees to be personal in nature and, therefore, taxable to the recipients. Neither the amount involved as to travel nor the use of the cars was considered to adversely affect the foundation's exempt status. (IRS letter, October 2, 1964.)

The CHAIRMAN. As you know, the Longwood Foundation failed to file tax returns for the four years 1955 through 1958. Was a penalty assessed for the foundation's failure to file?

Mr. HARDING. Mr. Chairman, I am not certain, but I do not believe that there is a basis for assessment of a penalty for failure to file on a tax exempt organization. I would have to check that.<sup>1</sup>

The CHAIRMAN. You mean to say they can just refuse or fail to file?

Mr. HARDING. I think the penalty, sir, is revocation of the exemption. I do not know a basis on which we can assess a penalty.

The CHAIRMAN. That would be a rather drastic remedy.

Mr. HARDING. That is one of our problems, Mr. Chairman, that in most of these cases we are up against a black and white situation. Not being taxable entities, not being able to impose penalties or assess a tax on the basis of the records, we will either go along with the organization or we revoke its exemption. This is one of the problems we have with the administration of the law.

The CHAIRMAN. Have any taxes been assessed on the Longwood Foundation as a result of the fiscal year 1961 audit?

Mr. HARDING. I will have to supply that for the record.

(Following is the information submitted by the IRS under date of October 2, 1964.)

No. The return was accepted as filed after field audit of the organization's activities for the fiscal year ended September 30, 1961. (IRS letter, October 2, 1964.)

The CHAIRMAN. Were there any areas of expenditures by Longwood which were disallowed by the IRS—such as travel and entertainment expenses, personal use of staff cars by personnel, or other areas?

Mr. HARDING. Same answer.

(Following is the information submitted by the IRS under date of October 2, 1964.)

No. In light of the determination to continue exempt status of the foundation, such items would not be considered for allowance or disallowance. See, however, the answer to the question at page 452, line 3, regarding the tax effect to the recipients. (IRS letter, October 2, 1964.)

The CHAIRMAN. Were any of the Longwood Foundation's allowances to employees for travel and entertainment ruled taxable to the recipients?

Mr. HARDING. Same answer.

(Following is the information submitted by the IRS under date of October 2, 1964:)

Yes, certain travel expenses and a portion of the use of foundation staff cars by certain employees were found to be personal in nature and, therefore, taxable to the recipients. (IRS letter, October 2, 1964.)

The CHAIRMAN. It appears that we are responsible, in part, for your situation, Mr. Harding—in that we willingly acceded to your request to be allowed to go on your vacation and to resume your testimony today. In resuming the hearing today, we may have placed you

<sup>1</sup> Correspondence between Chairman Patman and the Longwood Foundation discloses that no penalty was assessed on the Foundation for failure to file tax returns for the four years 1955 through 1958.



in a disadvantageous position. Hence, we will just ask you a few more and then wait until you are in a position to answer the earlier ones.

Mr. HARDING. You are referring to the questions left over from the August 10 hearing, Mr. Chairman?

The CHAIRMAN. Yes, sir.

Mr. HARDING. Yes, sir. I will assure you we will supply the information to you within the next few days, and I appreciate your consideration in allowing me this time to review the material rather than sending it down to you as unreviewed staff work.

The CHAIRMAN. Please furnish on Wednesday whatever information you cannot submit tomorrow.

Mr. HARDING. We will do the best we can.

The CHAIRMAN. Since foundations are funded with tax deductible contributions and earn tax-exempt income, would you agree that they require supervision at the Federal level?

Mr. HARDING. Yes indeed, sir.

The CHAIRMAN. Some attorneys have advised me that a substantial part of the emphasis of legal scholarship in the field of charities today is to mitigate or avoid the studies of the House Small Business Committee. It is alleged that certain research, although sponsored by bar associations and the various law schools, is being financed by foundations. Can you or Mr. Rogovin tell us anything about this?

Mr. HARDING. Well, there is a great deal of private research being funded by foundations, I know this to be a fact, Mr. Chairman.

The CHAIRMAN. Would you like to comment, Mr. Rogovin?

Mr. ROGOVIN. Mr. Patman, I am not aware of any situation where foundations are supporting any type of research with a view toward thwarting the activities of this Committee or of Congress.

Earlier in your statement you had said that attorneys had written, and this is true, they have written extensively, on the status of the existing law; pointing out in many instances manners in which taxpayers can avail themselves to their undying benefit of the existing statutes. But I am not aware of any program, conscious or otherwise, to thwart your activities.

The CHAIRMAN. Well, suppose you gentlemen explore this matter and report your findings to this Subcommittee.

Mr. HARDING. Yes.

(Following is the information submitted by the IRS under date of September 25, 1964:)

With regard to the question you raised as to the possibility of research being financed by foundations with a view to mitigating or avoiding the studies of the House Small Business Committee, we have found no evidence in our files of a foundation grant for such purpose.

The CHAIRMAN. What can you tell us about the Charitable Trusts and Foundation Study being conducted by the Russell Sage Foundation of New York City? For example, what is the purpose of this study, do you know, Mr. Harding?

Mr. HARDING. I do not, sir.

The CHAIRMAN. Do you know, Mr. Rogovin?

Mr. ROGOVIN. I do not, sir.

The CHAIRMAN. Can you tell us whether the Russell Sage Foundation has made any grants to any states during the past two years?

Mr. HARDING. I do not know, sir.

The CHAIRMAN. Please furnish for this record full details of any such grants made by the Russell Sage Foundation, including the name of the donee, the amount of the grant, the purpose of this grant, etc.

Mr. HARDING. Those to states, Mr. Chairman?

(The information submitted by the IRS under date of September 22, 1964, appears in Exhibits 26 through 29, pages 343-365.)

The CHAIRMAN. Yes, sir. It is approaching the time when we will have to go to the floor, so we will see you gentlemen then this afternoon at four, and you will take responsibility of notifying the CIA.

Mr. HARDING. Yes, sir; we will be happy to.

The CHAIRMAN. Without objection, the Committee will stand in recess until ten o'clock tomorrow morning, at which time we will want you back, Mr. Harding.

Mr. HARDING. In the morning?

The CHAIRMAN. Yes, sir.

(Whereupon, at 11:40 a.m., August 31, 1964, the subcommittee was recessed, to reconvene at 10 a.m., Tuesday, September 1, 1964.)

## **TAX-EXEMPT FOUNDATIONS: THEIR IMPACT ON SMALL BUSINESS**

**TUESDAY, SEPTEMBER 1, 1964**

**HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE NO. 1 ON FOUNDATIONS OF  
SELECT COMMITTEE TO CONDUCT STUDIES AND  
INVESTIGATIONS OF THE PROBLEMS OF SMALL BUSINESS,  
Washington, D.C.**

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 1301, Longworth House Office Building, Hon. Wright Patman (chairman of the subcommittee) presiding.

Present: Representatives Patman and Roosevelt.

Also present: Representatives McCulloch (ex officio) and Steed of the full committee, Representative Gonzalez, H. A. Olsher, Director of Foundation Studies, and Eugene Loehl, Assistant Minority Counsel.

The CHAIRMAN. The Committee will please come to order.

This is the sixth session of hearings of Subcommittee No. 1 on the subject of the Federal Government's supervision of tax exempt foundations and charitable trusts. On behalf of the Subcommittee, I should like to welcome our witness, Mr. Bertrand M. Harding, Acting Commissioner of the Internal Revenue Service.

We have with us this morning a member of the full Committee, the Honorable Tom Steed from Oklahoma.

### **TESTIMONY OF BERTRAND M. HARDING, ACTING COMMISSIONER, INTERNAL REVENUE SERVICE, ACCOMPANIED BY MITCHELL ROGOVIN, ASSISTANT TO THE COMMISSIONER—Resumed**

The CHAIRMAN. The first question I would like to ask Mr. Harding is—am I correct in my understanding that the application for tax exemption (Form 1023) requires foundations to disclose full and complete information concerning the purposes for which they are seeking tax exemption?

Mr. HARDING. Yes, Mr. Chairman.

The CHAIRMAN. Has the IRS compiled data on any of the following:

- (a) The number of tax exempt foundations which own and operate commercial AM, FM, and TV broadcast stations;
- (b) The number which own and operate non-commercial educational AM, FM, or TV broadcast stations;
- (c) The number which engage in the production and distribution of programs for radio and television stations?

Mr. HARDING. I do not believe we have ever tabulated that information in that form, Mr. Chairman.

The CHAIRMAN. Do you have it available where it could be tabulated?

Mr. HARDING. No, sir, it would only be on the returns of those foundations or those organizations. It would not be available in tabular form.

The CHAIRMAN. Considering the wide and dynamic use of radio and television, would you agree that the force of the dissemination of political broadcast material to a large number of stations could, in effect, constitute a network operation stretching out to every corner of this country, and if this political program material is partisan—not only would it be contrary to the public interest—it could well prove disastrous?

Therefore, is it not incumbent upon the IRS to have the type of information I just asked you about for purposes of determining whether a foundation may not qualify for tax exemption because a substantial portion of its activities are not for exempt purposes?

As you should know, the FCC has jurisdiction over broadcast stations only. It has no direct jurisdiction over producers or distributors of program material, and it is, in most part, dependent upon public complaints concerning the use of broadcast facilities for programs involving controversial issues.

You agree with that, do you not, Mr. Harding?

Mr. HARDING. I agree with your premise, Mr. Chairman, that if such a network existed, it could prove bad for the country, yes, sir. Our responsibility, however, is to police the individual foundations.

The CHAIRMAN. Let me repeat this one item that I think you should comment on and answer: Therefore, is it not incumbent upon the IRS to have the type of information I have just asked you about for purposes of determining whether a foundation may not qualify for tax exemption because a substantial portion of its activities are not for exempt purposes?

Mr. HARDING. It is certainly incumbent upon us to have information on individual foundations about activities which might disqualify them as exempt organizations; I agree thoroughly on that.

The CHAIRMAN. Please supply for the record of this hearing a complete list of the names and addresses of tax exempt foundations which (a) own and operate commercial AM, FM, and TV broadcast stations, including the call letters of the stations and place of location; (b) own and operate non-commercial educational broadcast stations, including the call letters and place of location of the stations; (c) produce and distribute programs for the use of radio and television stations, including the names of the programs and the call letters and locations of the stations to which these programs are distributed.

You can supply that for the record, can you, Mr. Harding?

Mr. HARDING. Mr. Chairman, as I pointed out, I think that that information would involve a review of many thousands and thousands of exempt organization files. I would respectfully suggest that perhaps the FCC would have that information on the basis of ownership of TV stations, radio stations, and the like, much more readily than the Internal Revenue Service.

The CHAIRMAN. Do they have anything to do with the tax exemption of such organizations?

Mr. HARDING. No, sir; but their records disclose the ownership of radio and TV stations.

The CHAIRMAN. We shall talk to you about that later, about how it should be supplied.

(Following is the response of the IRS submitted under date of September 25, 1964, respecting the information requested:)

There is no feasible way for the Internal Revenue Service to obtain, from its own records, information requested relative to ownership and operation of broadcast stations, etc., by tax exempt foundations.

The Service maintains no files on the basis of the various types of activities conducted by tax exempt foundations. Service files are presently maintained solely on the basis of the name of the exempt organization and it is not likely that a reliable listing of the particular information requested could be developed from them.

Since, as stated above, the Service presently maintains no record based on the types of activities engaged in by exempt foundations, it is not presently feasible for the Service to develop a listing of those which produce and distribute programs for radio and TV stations.

Mr. McCULLOCH. How about photographs during committee meetings?

The CHAIRMAN. We do not have television. We permit still pictures up to a point, usually, when the Committee starts. Under the rules of the House, the televising of committee hearings is not permitted, but still pictures are permitted.

Mr. McCULLOCH. Mr. Chairman, to pursue the matter, that is not my understanding. I hope that that does not become the rule of this Committee. During the time that the Committee is in session, I must respectfully lodge a protest against photographs. It is unfair to witnesses and it is unfair to the Committee members when the Committee is in session.

The CHAIRMAN. Well, we can restrict it, then, if you insist, Judge, to before the session starts. But it is traditional in the Banking and Currency Committee to permit still pictures up to a point, and that point is determined by the Chairman, which usually is for just a very few minutes—two or three minutes after the session starts. Then the photographers are asked to cease and desist.

But, in view of your request, we shall make sure that the Small Business Subcommittee No. 1, in the future, will just permit still pictures up to the opening of the hearing.

Does Section 501(c)(3) of the Internal Revenue Code require a foundation to establish that it is exclusively organized and operated for one or more of the purposes specified in that section of the law?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Does the statute prohibit a foundation—which is organized and operated exclusively for educational purposes—from devoting any substantial part of its activities in carrying on propaganda or otherwise attempting to influence legislation, and from participating in or intervening in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office?

Mr. HARDING. It does, Mr. Chairman.

The CHAIRMAN. Does the IRS examine the activities of tax exempt foundations to determine whether they are engaging in political activities in violation of the law?

Mr. HARDING. It does, Mr. Chairman.

The CHAIRMAN. Please describe the methods of investigation used to determine whether a foundation is engaging in political activity.

Mr. HARDING. Mr. Chairman, we customarily will examine all of the material—radio broadcasts, newsletters, publications of all sorts put out by the foundation over a reasonably average period of time—in order to determine whether or not the thrust of that material is in fact consonant with the educational purposes of that foundation or whether it is in violation thereof.

The CHAIRMAN. Section 315(a) of the Communications Act requires broadcast stations to accord equal broadcast opportunities to political candidates. Section 315(a), in pertinent part, reads as follows:

"If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all such candidates for that office in the use of such broadcasting station \* \* \*."

Would an adverse ruling by the Federal Communications Commission be pertinent to your consideration to revoke a foundation's tax exemption since it would then be crystal clear that the broadcasts in question were not non-partisan, and the foundation itself may have been an active participant in a political campaign on behalf of a candidate for public office, contrary to the express provision of the Internal Revenue Code which prohibits tax exemption foundations from engaging in political activities?

Mr. HARDING. I assume that your case, Mr. Chairman, assumes the ownership of the station by an exempt organization.

The CHAIRMAN. It concerns an adverse ruling. Would an adverse ruling by the Federal Communications Commission?

Mr. HARDING. Against the station, sir?

The CHAIRMAN. Yes.

Mr. HARDING. Unless the station were owned by an exempt organization, I cannot see how it would have an effect on the tax exemption of the foundation.

The CHAIRMAN. But if it were owned by the tax exempt organization?

Mr. HARDING. I think that this would certainly be a factor to be considered in reviewing their tax exemption, yes, sir.

The CHAIRMAN. Are you familiar with the FCC fairness doctrine in the handling of controversial issues of public importance?

Mr. HARDING. I am not personally familiar with it. Perhaps Mr. Rogovin is familiar with it.

The CHAIRMAN. Are you familiar with it, Mr. Rogovin?

Mr. ROGOVIN. Yes, sir, I have spoken with the FCC general counsel's office with respect to this matter.

The CHAIRMAN. The provision of Section 315 of the Communications Act, known as the "fairness doctrine" requires broadcast stations "to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance."

Would repeated adverse rulings of the FCC, involving a tax exempt foundation which either produces or broadcasts programs dealing with

controversial political issues, be decisive in your consideration of revocation of a tax exemption?

Mr. ROGOVIN. No, Mr. Patman, it wouldn't be decisive in view of the interpretation that the FCC places on what amounts to controversial. We would have to review the material and examine the statements to determine whether, under our regulations, there has been a political purpose subserving the statute, or whether this was a matter of a station getting into a controversial matter and having a complaint filed.

As I understand it, if a complaint letter comes in indicating that a particular broadcast is controversial, the FCC would then write the station and in effect say, "What about it?"

At that point, equal time may well be provided by the station. This is necessarily the test that we would apply in determining whether an exempt organization is in fact operating outside of the purview of the statute.

Mr. STEED. Mr. Chairman?

The CHAIRMAN. Yes, sir, Mr. Steed.

Mr. STEED. Has there ever been an instance where you actually followed the procedure?

Mr. ROGOVIN. We are currently examining a number of exempt organizations who use radio and television media to distribute their information and their so-called educational material to the public. We have spoken with the FCC regarding their activities, and it is our conclusion that we could not gain too much from using the test the FCC uses. We have an independent test that our statute gives us. Although we have talked with them, we have not found it to be, as the Chairman asked, decisive in determining whether they should remain exempt or not.

Mr. STEED. Is there an instance where you have revoked a tax exempt foundation's status because of this situation?

Mr. ROGOVIN. I am currently unaware of any specific instance. If a search of our files so indicates, we would be glad to supply it for the record.

(Following is the information submitted by the IRS, under date of September 25, 1964:)

With regard to the question raised as to whether we have ever revoked a foundation's tax exempt status because of violation of Federal Communication Commission rules, we have examined our records and find no case where tax exempt status has been revoked solely on that basis.

Mr. STEED. How many such cases do you have under review at the present time?

Mr. ROGOVIN. We have approximately 24 cases of organizations that use mass media. This includes not only television and radio but publications. I know that all of them do not use the radio, but a substantial number of them do. These are currently under study.

Mr. STEED. Could you furnish the Committee with a list of those you are reviewing?

Mr. HARDING. If I might respond to that, Mr. Steed, we would prefer not to announce publicly our investigative operations until such time as they have reached a conclusion. As Mr. Rogovin indicates, a number of these organizations are under very active investigation. I would be happy to give you that information personally. I would prefer not to put it in a public record.

Mr. STEED. Can you give us any indication as to when you think you will reach final conclusions regarding these 24 cases?

Mr. HARDING. They will not be all reached simultaneously, Mr. Steed. There will be one or two of these cases concluded very shortly, and our actions will be taken on those cases. The other cases will follow along behind, in part based upon results in the lead cases.

Mr. STEED. Would it be a fair assumption to say that all 24 of these cases have come up by reason of complaints that have been filed with you by the public or some interested parties?

Mr. HARDING. They represent generally organizations which have had publicity of one sort or another, much of it on the floor of the Congress, complaining about their activities. Some of them have been specifically complained about to the Internal Revenue Service. Others we have gotten by virtue of the public record.

(Information, respecting the 24 cases, was submitted to the Subcommittee in Executive Session.)

The CHAIRMAN. What type of regular liaison is there between the IRS and the FCC in the latter's enforcement of Section 315 and your enforcement of Section 501(c) of the Code? For example, since 1960, has the IRS requested the FCC to submit to it any adverse rulings under Section 315 involving a tax exempt organization, (a) operating a broadcast station, or (b) producing and distributing a program involving controversial issues to broadcast stations?

Mr. HARDING. Mr. Rogovin has indicated he is in personal contact with the officials of the FCC. Mr. Rogovin, as you may recall, is chairman of our Exempt Organizations Council, and as such, is perhaps the most knowledgeable person within the Revenue Service in this particular area. He has maintained liaison with the FCC on a general basis.

The CHAIRMAN. Since 1960, has the IRS requested the FCC to submit to it any adverse rulings under Section 315 involving a tax exempt organization operating a broadcast station, producing and distributing a program?

Would you answer that, Mr. Rogovin?

Mr. ROGOVIN. Yes, sir. Mr. Chairman, the specific answer is no. The background—

The CHAIRMAN. Well, that is all right. The answer is no?

Mr. ROGOVIN. The background to it, I think, may be helpful to the Committee.

The CHAIRMAN. All right, sir.

Mr. ROGOVIN. I have met with Chairman Henry of the FCC and we have discussed our mutual problems in this general area. We concluded that the specific information, a specific action by the FCC, would not be decisive in the Revenue Service's point of view, and we have operated on the basis that they would bring to our attention anything that they thought was relevant to the tax laws, and we would also bring to their attention instances where we felt they might be concerned.

The CHAIRMAN. I would like you to answer the other question, too. Since 1960, has the IRS furnished the FCC with a list of names and addresses of tax exempt foundations which produce and distribute program material to broadcast stations, and the names of those programs?



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Mr. ROGOVIN. I believe we have given the FCC a list of the organizations that we are currently concerned with in this group of 24, yes, sir.

The CHAIRMAN. The 24 that was mentioned by Mr. Harding?

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. Since 1960, has the IRS requested the FCC to submit to the IRS copies of any complaints which the FCC has received against tax exempt foundations, (a) operating broadcast stations, or (b) producing and distributing programs to broadcast stations?

Mr. ROGOVIN. Not specifically, no, sir.

The CHAIRMAN. Since 1960, how many foundation tax exemptions have been revoked for violation of the political activities provisions of the Code?

Mr. ROGOVIN. A good number. I could not give you the specific number, but we can supply it for the record.

The CHAIRMAN. Would you supply it for the record?

Mr. ROGOVIN. Yes, sir.

The CHAIRMAN. Please submit a list of these revocation cases for this record, including a brief description of the nature of the violations and the date of the revocation. Put that in your statement, too, please.

(Following is the information submitted by the IRS, under date of October 2, 1964:)

Since 1960, the Service has revoked tax exempt status of the following organizations because of political or legislative activities:

Name and Address	Date of Action	Nature of Activities
1. Trustees for Conservation, San Francisco, California. <sup>1</sup>	3-21-60	Advocating wilderness legislation and distribution of literature pertaining to pending legislation.
2. Arkansas Free Enterprise. <sup>1</sup>	3-22-60	Advocating certain political, social and economic reforms such as right to work laws and labor legislation. Opposition to certain Government policies against "state rights".
3. Constitution and Free Enterprise Association, New York, New York.	7-8-60	Advocating certain political, economic and social reforms. Distribution of literature to influence legislation and political propaganda.
4. National Foundation for Education in American Citizenship, Inc., Indianapolis, Indiana.	10-10-62	Advocating particular economic views through the support of a widespread publication.
5. Municipal League of Spokane, Spokane, Washington.	12-6-62	Participation in campaign of candidates for public office and evaluation of candidates.
6. Vivisection Investigation League Anti-Vivisection Society of New York, Inc., New York, New York.	1-11-63	Advocating legislation to prevent vivisection of animals for scientific experiment.

<sup>1</sup> Exempt status under section 501(c)(3) of the Code revoked. Granted exempt status under section 501(c)(4) concurrently. Under the latter classification, contributions to the organization are not deductible by the donors.

In addition to the six revocations, the Service has, since 1960, denied applications for exempt status from 32 additional organizations. These are listed by type of organization, as follows:

Type of Organization	Date of Action	Nature of Activities
1. Civil Rights-----	1-6-60	Advocating civil rights and social legislation in appearances before congressional committees.
2. Partisan Ideological---	8-22-60	Advocating the denial of admission of Red China into the United Nations and engaging in circulating a petition to the President on their views.
3. Educational-----	1-31-61	To educate in the techniques of politics.
4. Partisan Ideological---	5-17-61	Advocating the single tax, which objective could only be accomplished by legislation.
5. Civil Rights Group----	7-12-61	Advocating the passage of fair employment practice laws and the support of certain candidates for public office.
6. Partisan Ideological---	8-22-61	Advocating the establishment of a world government whose purpose can only be accomplished through legislation.
7. Partisan Ideological---	9- 5-61	Advocating the organizations's views on segregation of the races which purpose can only be accomplished through legislative and political activities.
8. Citizens Association---	9- 8-61	Advocating ordinances before city council to protect interest of residential property owners.
9. Citizens Association---	11-30-61	Advocating certain states constitutional amendments and supporting petitions for their adoption.
10. Research Commission--	11-31-61	Advocating certain government reforms which can only be accomplished through legislation.
11. Partisan Ideological---	12-13-61	Advocating and dissemination of literature supporting the organization's cause without a full and fair explanation of the facts to permit the public to make an independent conclusion.
12. Partisan Ideological---	2-28-62	Advocating the repeal of the 16th amendment to the constitution through literature and appearances before state legislature.
13. Partisan Ideological---	5-16-62	Advocating certain legislative action through the publication and distribution of statements by the creator of the organization.
14. Research Organization--	5-22-62	Advocating atomic energy legislation and supporting candidates for public office.
15. Partisan Ideological---	7-2-62	Advocating the development of certain fiscal policies by the Federal government and requiring legislation to vote for an amendment to the constitution.
16. Partisan Ideological---	7-23-62	Advocating the elimination of foreign aid, the income tax, social security and other legislation, supporting the election of conservative candidates.

Type of Organization	Date of Action	Nature of Activities
17. Partisan Ideological	10-31-62	Advocating constitutional reforms.
18. Political Action	12-18-62	Endorsement of candidates for public office; dissemination of literature pertaining to legislative matters.
19. Forum	1-23-63	Advocating particular viewpoints on disarmament through the dissemination of tapes, recordings and selected speakers.
20. Partisan Ideological	3-19-63	Dissemination of Anti-Catholic political material.
21. Partisan Ideological	4-16-63	Advocating particular philosophy which can only be attained through legislation. Contemplated participation in political campaigns.
22. Conservation	7-17-63	Advocating legislation for state soil and water conservation.
23. Partisan Ideological	8-6-63	Advocating changes in the United Nations and political actions in foreign nations through direct action by the organization or others.
24. Partisan Ideological	11-4-63	Dissemination of periodicals pamphlets and other printed matter pertaining to education, segregation, national economic policy, communism, etc.
25. Citizens Association	12-4-63	Advocating the acquiring and operating of public utilities and reducing real property taxes, which objective can only be accomplished by legislation.
26. Partisan Ideological	4-17-64	Advocating through pamphlets and publications the passage of a right to work law.
27. Forum	6-1-64	Sponsoring forums and crusades concerning anti-communism and politics. Publishing of newspaper on these subjects and disseminations of literature of a similar nature.
28. Partisan Ideological	6-12-64	Advocating certain political, social, and economic reforms based on views of creator of organization.
29. Partisan Ideological	6-27-64	Advocating certain views through the publication of pamphlet.
30. Anti-Vivisection Association	7-14-64	Opposing legislation directed at anti-vivisection.
31. Partisan Ideological	6-29-64	Dissemination of information regarding the constitution and the advocating of a proposed constitutional amendment.
32. Political Action	8-17-64	Supporting the reelection of candidates favoring the repeal of the 16th amendment and other legislation favored by the organization. Supporting the candidacy of independent Presidential and Vice Presidential candidates.

The CHAIRMAN. Does the Code give the IRS discretion in determining whether a foundation's tax exemption should be revoked because of a violation of the political activities provision? Please explain the standards which are used in determining whether or not to revoke.

Mr. ROGOVIN. The term "discretion" is probably inappropriate in this regard. We have a statutory standard, Mr. Chairman. I believe you read it into the record a few minutes ago, that no substantial part of the activities of the organization be carrying on propaganda, or otherwise attempting to influence legislation.

Now, the key words here are "no substantial part." That came into the law in 1934 and has been a very difficult quantitative test to apply for the Service.

I might point out at the time that it came into the statute, Senator La Follette pointed out that the Administrator is going to be plagued with difficulty in determining a "substantial part," and he pointed out that perhaps an all-or-nothing rule would be more appropriate. In any event, we have worked with the statute. We have a court decision, the Seasongood case, where a Circuit Court concluded that something approximating five per cent of the activities of the organization did not represent a substantial part of their activities.

In applying the test, our revenue agent must look at all of the activities of the organization; then segregate those activities which contravene the statute. And then, the determination must be made as to whether or not they are a substantial part of the total.

The CHAIRMAN. Since 1960, has the IRS made advisory or declaratory rulings to tax exempt foundations who inquire into the question of whether certain activities are in violation of the political prohibitions of the Code?

Mr. ROGOVIN. I believe we have, yes, sir.

The CHAIRMAN. Please supply for this record a list of such rulings, identifying the tax exempt foundations and describing the rulings.

Mr. ROGOVIN. We can supply the information dealing with the organization, the inquiry, and the result.

The CHAIRMAN. That is right.

Mr. ROGOVIN. The name of the organization may create a problem.

The CHAIRMAN. Supply that for the record when you look over your transcript.

What did you say about the name? We want to identify the foundation. You could do that all right?

Mr. ROGOVIN. We may have some difficulty, Mr. Patman, with respect to our disclosure statutes.

The CHAIRMAN. Well, I am not sure that we would agree with you on that, Mr. Rogovin.

Mr. HARDING. We may not have a problem, Mr. Chairman. If we do, we shall discuss it with you.

The CHAIRMAN. We shall discuss it later, fine.

(Following is the information submitted by the IRS, under date of October 2, 1964:)

Since 1960, the National Office of the Service has issued advisory rulings as to whether certain activities would be in violation of the political prohibition provisions of section 501(c)(3) of the Internal Revenue Code to the following organizations:

Name and Address	Date	Question Dealt With
1. National Society for Medical Research Chicago, Illinois.	5-23-61	The extent to which an exempt organization can engage in the support of proposed legislation.
2. The Texas Association for Mental Health Austin, Texas.	10-3-61	The extent to which an exempt organization can engage in legislative activities for improving treatment facilities for the mentally ill.
3. Council of Social Agencies of Rochester and Monroe County, Inc. Rochester, New York.	12-20-63	The extent to which an exempt organization can advocate the adoption of pending legislation.

The CHAIRMAN. Following is the full content of a Public Notice (Report No. 4468) of the Federal Communications Commission, dated December 19, 1962, relating to "Noncommercial Stations and Political Broadcasts." It reads as follows:

In response to an inquiry from the National Association of Educational Broadcasters as to whether the carrying of political programs by educational TV stations would affect their tax-exempt status with the Internal Revenue Service, the Commission obtained the views of the latter agency and transmitted them in full to the NAEB for its information.

In its letter of transmittal to the NAEB, the Commission further stated:

"It would appear that the noncommercial educational station could not, without jeopardizing its tax-exempt status, take sides in a political campaign or 'editorialize'. But it would also appear that if the non-commercial educational station presents political broadcasts in a truly nonpartisan manner, acting 'entirely in the public interest' and without itself 'participating or intervening in a political campaign on behalf of a candidate for public office' \* \* \* it would not run afoul of the cited tax provisions."

Please submit for the record a copy of your memorandum or letter replying to the Commission's inquiry, which resulted in the FCC's pronouncement which I have just read into the record. You would be willing to submit that?

Mr. HARDING. Yes, sir.

(The information submitted by the IRS, under date of September 22, 1964, appears on pages 261-263.)

The CHAIRMAN. Based upon your reply to the FCC, I take it that the Code and Treasury regulations, without question, prohibit tax exempt foundations from engaging in partisan political activities. Is this correct?

Mr. HARDING. That is correct.

One second, Mr. Chairman. Mr. Rogovin would like to add to that.

Mr. ROGOVIN. Mr. Patman, the term and the language in the statute—I think that is what we should hew to. The statute says, “does not participate in, or intervene in, (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.”

So it is a political-type program that relates to a campaign for public office as opposed to perhaps a politically oriented program relating to legislation or something other than an election. It is as to the latter that there is a flatfooted prohibition.

The CHAIRMAN. Am I also correct in my understanding that a tax exempt foundation cannot urge, advocate, or otherwise endorse a particular view on a political issue?

Mr. HARDING. I think the prohibition there goes to the question of its substantial nature, Mr. Chairman.

The CHAIRMAN. The rule that you mentioned a while ago?

Mr. HARDING. Yes, sir, substantial nature.

The CHAIRMAN. During the last few years, would you say that the subject of the “nuclear weapons test ban treaty” constitutes a critical political issue of our times?

Mr. HARDING. I think it does, Mr. Chairman.

The CHAIRMAN. Is this type of political issue encompassed within the meaning of “political activities” prohibited by the Code?

Mr. HARDING. A substantial portion of it, yes, sir.

The CHAIRMAN. Would a partisan statement on the nuclear weapons test ban treaty by a tax exempt foundation be encompassed within the Treasury regulations forbidding such organizations from carrying on propaganda or otherwise attempting to influence legislation?

Mr. HARDING. If a substantial portion of the material fell into this category, yes, sir, it would.

The CHAIRMAN. Would you say that, during the last few years, such subjects as “aid to education,” “highway spending,” “urban renewal,” “curtailment of Federal Government activities in these areas,” “Federal farm program,” “Medicare,” and the “Supreme Court’s decision on integration” are political issues of our day?

Mr. HARDING. Yes, sir; I would.

The CHAIRMAN. Would you say that a tax exempt foundation which engages in the dissemination of partisan information to the public on these subjects is violating the political activities prohibitions of the Code?

Mr. HARDING. Not automatically, Mr. Chairman. The foundations under our existing law and regulations are able to speak on these subjects. If, however, we find that their legislative advocacy is substantial or their dissemination is not of an educational nature—that is they are not presenting both sides of the question, they are not supporting their position with factual data—then a serious question is raised about their educational status.

The CHAIRMAN. I should like to ask you about Life Line Foundation, Inc. (formerly Facts Forum, Inc.) of Dallas, Texas. I shall ask Mr. Olsner to continue if he will, please.

Mr. OLSNER. First, here is a summary of the Foundation’s income and expenditures for fiscal years 1951 through 1963:

- Total receipts were \$5.1 million, including over \$3 million contributions received.

- Administrative and operating expenses totaled \$4.9 million.
- Charitable contributions totaled \$1,000.
- Awards and scholarship grants totaled \$47,268. Awards were made for the following activities: suggestions for questions to be discussed; best letters to editors on current events; largest group meeting; best arranged group meeting; obtaining largest number of new members; materials for Facts Forum News—including essays, prose quotations, etc.; slogans for Facts Forum; suggested question for Facts Forum poll cards; suggested topic questions for Facts Forum television programs.

The details of the Foundation's income and expenditures are rather lengthy so I shall insert them in the record at this point, instead of reading them, and shall give you a copy.

(The insert follows:)

LIFE LINE FOUNDATION, INC. (FORMERLY FACTS FORUM, INC.)

Gross Income—Fiscal years ending Sept. 30, 1951 through Sept. 30, 1963  
(excluding contributions received)

Interest	-----	\$623. 70
Year ending 9/30	Amount	
1952	\$143. 75	
1953	479. 95	
	<hr/>	
	\$623. 70	
Dividends	-----	964. 71
Year ending 9/30	Amount	
1953	\$119. 25	
1954	174. 90	
1955	278. 16	
1956	294. 30	
1957	98. 10	
	<hr/>	
	\$964. 71	
Gain (or loss) from sale of assets	-----	21, 690. 06
Year ending 9/30	Amount	
1954	\$370. 52	
1957	21, 531. 40	
1959	(111. 52)	
1960	(100. 34)	
	<hr/>	
	\$21, 690. 06	
Receipts from subscriptions to Facts Forum News	-----	407, 787. 78
Year ending 9/30	Amount	
1953	\$3, 832. 80	
1954 (including sale of individual copies)	64, 971. 99	
1955	204, 401. 43	
1956 (including sale of individual copies)	87, 099. 67	
1957	47, 481. 89	
	<hr/>	
(Including donations for subscriptions in amounts less than \$100--	\$407, 787. 78	

*Gross Income—Fiscal years ending Sept. 30, 1951 through Sept. 30, 1963  
(excluding contributions received)—Continued*

Receipts from advertisements in Facts Forum News-----		\$9,992.08
<i>Year ending 9/30</i>	<i>Amount</i>	
1954-----	\$4,371.71	
1955-----	4,191.05	
1956-----	1,381.30	
1957-----	48.02	
	<hr/>	
	\$9,992.08	
Receipts from newspaper distribution-----		351,230.77
<i>Year ending 9/30</i>	<i>Amount</i>	
1960-----	\$52,690.62	
1961-----	71,447.75	
1962-----	118,071.78	
1963-----	109,020.62	
	<hr/>	
	\$351,230.77	
Receipts from rental of television films-----		4,696.00
<i>Year ending 9/30</i>	<i>Amount</i>	
1953-----	\$1,418.00	
1954-----	2,238.50	
1955-----	1,039.50	
	<hr/>	
	\$4,696.00	
Receipts from television-----		94,199.63
<i>Year ending 9/30</i>	<i>Amount</i>	
1962-----	\$34,377.16	
1963-----	59,822.47	
	<hr/>	
	\$94,199.63	
Receipts from rental of radio tape recordings-----		956,447.59
<i>Year ending 9/30</i>	<i>Amount</i>	
1953-----	\$1,422.86	
1954-----	12,904.35	
1955-----	10,927.14	
1956-----	1,831.00	
1959-----	104,387.02	
1960-----	126,193.57	
1961-----	174,343.73	
1962-----	242,882.49	
1963-----	280,835.43	
	<hr/>	
	\$956,447.59	
Receipts from distribution of books and recordings-----		5,265.59
<i>Year ending 9/30</i>	<i>Amount</i>	
1953-----	\$130.10	
1954-----	366.21	
1955-----	630.41	
1956-----	100.39	
1957-----	4,038.48	
	<hr/>	
	\$5,265.59	
Receipts from distribution of books-----		79,502.72
<i>Year ending 9/30</i>	<i>Amount</i>	
1959-----	\$57,106.05	
1960-----	3,176.73	
1961-----	1,227.87	
1962-----	8,487.21	
1963-----	9,504.86	
	<hr/>	
	\$79,502.72	



*Gross Income—Fiscal years ending Sept. 30, 1951 through Sept. 30, 1963  
(excluding contributions received)—Continued*

Receipts from sale of transcript..... \$100,894.62

<i>Year ending 9/30</i>	<i>Amount</i>
1959.....	\$713.35
1960.....	1,599.37
1961.....	15,086.03
1962.....	38,136.29
1963.....	45,359.58

\$100,894.62

Receipts from sale of music rights—year ending 9/30/56..... 100.00  
Receipts from Life Line Links..... 4,244.14

<i>Year ending 9/30</i>	<i>Amount</i>
1962.....	\$2,951.39
1963.....	1,292.75

\$4,244.14

Receipts from sale of article reprints—year ending 9/30/58..... 6.50  
Award received for slogan—year ending 9/30/53..... 100.00  
Receipts from collection of written-off debt—year ending 9/30/58..... 173.44  
Commissions received—year ending 9/30/58..... 4,604.68  
Miscellaneous receipts..... 4,064.51

<i>Year ending 9/30</i>	<i>Amount</i>
1960.....	\$21.06
1961.....	874.06
1962.....	2,276.98
1963.....	992.41

\$4,064.51

Total Gross Income—fiscal year 9/30/51 through 9/30/63.. \$2,046,488.52

*Contributions received (including those less than \$3,000 to 1953 and those less than \$100 beginning 1953, and excluding "donations" for subscriptions)*

Contributions received..... \$3,082,598.19

<i>Year ending 9/30</i>	<i>Amount</i>
1951.....	\$47,543.00
1952.....	181,316.88
1953.....	245,810.53
1954.....	688,693.25
1955.....	1,224,423.56
1956.....	600,285.81
1957.....	65,019.00
1958.....	144.40
1959.....	6,463.52
1960.....	22,898.24
1961.....	-----
1962.....	-----
1963.....	-----

\$3,082,598.10

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*Disbursements—fiscal years Sept. 30, 1951 through Sept. 30, 1963*

Awards paid out----- \$45,022.65

<i>Year ending 9/30</i>	<i>Amount</i>
1951-----	\$2,152.00
1952-----	14,764.10
1953—Cash-----	326.00
Merchandise-----	2,344.55
1954—Cash-----	6,145.00
U.S. Bonds-----	3,375.00
Merchandise-----	1,355.00
1955—Cash-----	3,331.00
U.S. Bonds-----	3,862.50
Merchandise-----	3,244.00
1956—Cash-----	2,643.00
U.S. Bonds-----	187.50
Merchandise-----	1,057.00
1957—Cash-----	236.00
	<hr/>
	\$45,022.65

Scholarship grants paid----- 2,245.00

<i>Year ending 9/30</i>	<i>Donee</i>	<i>Amount</i>
1955—	Karl Baarslag-----	\$1,045.00
	Paul Crouch-----	1,200.00
		<hr/>
		\$2,245.00

Charitable contributions----- 1,000.00

<i>Year ending 9/30</i>	<i>Donee</i>	<i>Amount</i>
1957—	Wadley Blood Center, Dallas-----	\$1,000.00

Administrative and operating expenses----- \$4,939,895.83

<i>Year ending 9/30</i>	<i>Amount</i>
1951-----	\$34,098.79
1952-----	136,771.74
1953-----	268,263.17
1954-----	756,746.55
1955-----	1,478,915.99
1956-----	684,679.68
1957-----	125,975.85
1958-----	10.00
1959-----	184,369.50
1960-----	188,656.51
1961-----	225,162.84
1962-----	410,795.03
1963-----	445,450.18
	<hr/>
	\$4,939,895.83

## TAX-EXEMPT FOUNDATIONS: IMPACT ON SMALL BUSINESS 229

*Assets, Liabilities, Net Worth*

Date	Total assets based on Foundation's carrying values	Total liabilities	Net worth based on Foundation's carrying values
6/22/51.....	\$2,500.00	.....	\$2,500.00
10/1/51.....	11,922.71	\$630.50	11,292.21
10/1/52.....	41,942.25	725.95	41,217.30
10/1/53.....	25,002.04	1,404.97	23,597.07
10/1/54.....	33,051.54	1,681.89	31,369.65
10/1/55.....	103,627.62	117,965.21	(14,337.59)
9/30/56.....	69,719.55	80,475.05	(10,755.50)
9/30/57.....	249.54	.....	249.54
9/30/58.....	563.88	.....	563.88
9/30/59.....	52,442.42	63,648.82	(11,206.40)
9/30/60.....	69,001.68	61,665.44	7,336.24
9/30/61.....	79,416.59	34,263.75	45,152.84
9/30/62.....	128,788.49	47,247.38	81,541.11
9/30/63.....	176,010.64	33,091.59	142,919.05

The CHAIRMAN. By letter of September 28, 1962, the Baltimore District Office of the IRS advised Life Line Foundation, Inc., of Dallas, that one of its examining officers had recommended that the Foundation's tax exemption be revoked, based on an audit for fiscal year ending September 30, 1961. The language is as follows:

It is recommended that the tax exemption granted under Section 501(c)(3) as an educational organization be revoked since it is deemed that the organization fails to meet the definition of educational as defined in Section 1.501(c)(3)-1(d)(3) of the Regulations.

Does this mean that the recommendation applies only to the fiscal year ending September 30, 1961 and subsequent years? Or is it retroactive, Mr. Harding?

Mr. HARDING. Without examining the Baltimore letter in more detail, Mr. Chairman, I am not sure I can answer that question.

The CHAIRMAN. This is all that there is. This is all that was said by the Baltimore office.

Mr. HARDING. Generally, the denial of this sort would be a prospective denial.

The CHAIRMAN. Would be a what?

Mr. HARDING. A prospective denial.

The CHAIRMAN. Life Line filed a protest. By letter of March 8, 1963, Mr. Irving Machiz, District Director, Baltimore, advised Life Line as follows:

An informal conference was granted with respect to the matter and the conferee sustained the findings of the Examining Officer. The recommendations of the Examiner Office and the conferee have been carefully reviewed and approved by this office. The matter will be referred to our National Office for consideration. You will be granted a hearing in that office prior to any issuance of an adverse ruling.

What is the IRS national office decision in this matter?

Mr. HARDING. We have not yet reached a decision in this matter, Mr. Chairman.

The CHAIRMAN. Let us see, it came to you March 8, 1963. This is September 1, 1964. You say you have not reached a decision?

Mr. HARDING. It was necessary in this connection, Mr. Chairman, for the national office to obtain additional information beyond that which was obtained by the Baltimore district. This information has been obtained and is in the process of analysis and final conclusion.

The CHAIRMAN. If the Baltimore District Office recommendation to revoke Life Line's tax exemption is upheld, would the Foundation only be taxable for the years beginning fiscal year 1961?

Mr. HARDING. That is generally the case, Mr. Chairman, yes.

The CHAIRMAN. Do you know whether the Life Line program advocates and urges a partisan viewpoint on such subjects as test bans and disarmament, Medicare, aid to education, income taxes, mental health, the Federal farm program, Federal welfare programs in general, etc.

Mr. HARDING. Mr. Chairman, I am aware of the fact that they give forth information on these subjects. I think for me to draw a conclusion that they have taken a partisan position would be preempting the results of our study, since that would go the question of their exemption.

The CHAIRMAN. Do you know whether the FCC has received complaints concerning the Life Line program where complainants seek radio time to reply to the controversial issues carried by the program?

Mr. HARDING. I have no personal knowledge of what has been received by the FCC, Mr. Chairman.

The CHAIRMAN. Do the IRS records show any FCC rulings on the question of whether a particular Life Line program constituted a controversial issue requiring the radio station involved to afford a reasonable opportunity to complainants for the presentation of contrasting viewpoints?

Mr. HARDING. Mr. Rogovin informs me that in connection with our study, we are aware of this circumstance to which you refer.

The CHAIRMAN. It is being considered?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Has the IRS determined whether this foundation is engaged in propaganda or political activities?

Mr. HARDING. We have not made that determination to the extent that it would preclude their exemption.

The CHAIRMAN. If the Foundation is shown to be involved in propaganda or legislation, either one of those activities would disqualify it for tax exemption, is that correct?

Mr. HARDING. It is the question of substantiality, Mr. Chairman.

The CHAIRMAN. How do you explain the fact that the Life Line Foundation still retains its tax exempt status despite the fact that the FCC has interpreted a number of Life Line programs under its "fairness doctrine" as programs involving controversial public issues requiring radio stations carrying the particular Life Line program in question to accord reasonable opportunity for the presentation of conflicting or contrasting viewpoints?

Mr. HARDING. I would like Mr. Rogovin to respond to that question, Mr. Chairman.

Mr. ROGOVIN. Mr. Patman, if I may, the exemption is granted to educational organizations; it must have an educational purpose exclusively. Within the educational dichotomy, we have the university and we have the type that does not have a faculty or curriculum. This is what we are talking about in this latter category. In this latter category, our regulations say that an organization may be educational if its material relates to "the instruction of the public on subjects useful to the individual and beneficial to the community." We further say that "an organization may be educational even though it advocates a particular position or viewpoint, so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion."

Now, in the case that you are referring to and in a number of other cases, our analysis is an extremely deep one of a myriad of materials that the organization has put out over a period of time. The decision is not on the single question of whether or not they have been for or against a particular piece of legislation. It is the manner in which they take a position, whether they give a full and fair exposition or whether they had a bias. This is an extremely difficult determination to make, because organizations quite often set up a format to make it appear that both sides of the issue are being given. They may have the arguments pro and the arguments con; yet the whole thing is weighted so that their particular viewpoint emerges as the clear choice.

Now, these are extremely difficult issues for our people to grapple with and this is currently what is going on with respect to Life Line and a number of other organizations. So there is no flat footed answer as to any particular activity. It has to be held to the light of the regulations.

The CHAIRMAN. By letter of March 11, 1964, we asked the Foundation to furnish the following information regarding donations received for subscriptions to Facts Forum News.

Mr. Olsher, suppose you read this.

Mr. OLSHER (reading):

1. Amount of cash received from each donor during each year.
2. Amount and description of other property received from each donor during each year. If stocks, bonds or other securities were received, please describe fully, including name of issuing company, type of issue, number of shares or face amount, etc.
3. Number of subscriptions purchased during each year by each of the purchasers.
4. The name and address of each person or organization receiving a subscription as a result of each purchaser's payments, and the beginning date and expiration date of each subscription.
5. Subscription rates for Facts Forum News during each year beginning 1951.
6. Auditor's statements showing circulation of Facts Forum News for each of the years beginning 1951, including number of subscribers and single copy sales.
7. Copy of each advertising rate card used for Facts Forum News beginning with the year 1951.

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The Foundation replied as follows by letters of April 2, 1964 and April 20, 1964:

1. There were no contributions for subscriptions other than cash.
2. The information requested in the aforementioned items 3 and 4 was not available to the Foundation, and they had no knowledge as to where we could obtain the information.
3. The subscription rate for Facts Forum News through May 1956 was \$2 per year or \$5 for three years. The subscription rate between June 1956 through December 1956 was \$3 per year, \$5 for two years and \$7 for three years. Publication of Facts Forum News ceased the latter part of 1956.
4. There are no auditor's statements or advertising rate cards available.

Here we have a situation where 114 known donors contributed to the Foundation \$273,691.01 for subscriptions to Facts Forum News during the three years of 1954 through 1956, but the Foundation claims that there is no record of (1) the number of subscriptions purchased by each donor, (2) the names of the persons who received these subscriptions, and (3) the beginning date and expiration date of each subscription.

Each of the donors no doubt took the maximum charitable deductions on their income tax returns or deducted such contributions as business expense.

Therefore, I suggest, Mr. Harding, that the IRS attempt to compile the following information in connection with donations received for subscriptions to Facts Forum News, and submit it to this Subcommittee for purposes of the hearing record:

(a) Number of subscriptions purchased during each year by each of the purchasers.

(b) The name and address of each person or organization receiving a subscription as a result of each purchaser's payments, and the beginning date and expiration date of each subscription.

(Following is the information submitted by the IRS, under date of October 2, 1964:)

We have searched the Service's files and were not able to find detailed information on payments made during the years 1954 through 1956 for the Facts Forum News. Thus, to obtain the information requested, it would be necessary to examine the records of the Life Line Foundation. The Service is now in the process of considering a District Office proposal to revoke the exempt status of the foundation for the year 1961 on which all field examination work has already been completed. In light of this, an audit by the Service solely to obtain this particular information for the years 1954 through 1956 would be an unwarranted exercise of the Service's authority.

The CHAIRMAN. A number of other questions occur to me regarding the operations of this foundation.

As stated earlier, the tax returns indicate that 114 individuals and organizations contributed to the Foundation \$273,691.01 for subscriptions to Facts Forum News during fiscal years 1954 through 1956.

Following are the names and addresses of such donors and the amounts they contributed for subscriptions to Facts Forum News, excluding contributions of less than \$100. Here again, I shall insert the information in the record, and give you a copy.

(The insert follows:)

*Purchaser of subscriptions*

	<i>Amount</i>
Acme Steel Co., Riverdale Station, Chicago.....	\$574.00
Leo Adler, Baker, Oregon.....	1,000.00
American Snuff Co., Memphis.....	200.00
Baker Oil & Tool Co., Box 2274, Terminal Annex, Los Angeles.....	300.00
Harry Bass Drilling Co., 1403 Magnolia Building, Dallas.....	100.00
Bell Transportation Co., P. O. Box 8598, Houston.....	600.00
L. M. Berry & Co., Hulman Bldg., Dayton.....	3,596.00
Blue Bell, Inc., E. W. Weant, Vice-Pres., Drawer C-2, Greensboro, N.C.....	100.00
Blanton Drilling Co., 2323-24 Gulf Building, Houston.....	100.00
The Brewster Co., Shreveport.....	1,000.00
Brinkerhoff Drilling Co., Denver, Colorado.....	300.00
Zack K. Brinkerhoff, Brinkerhoff Drilling Co., Continental Bldg., Dallas.....	250.00
Enoch Brown, Memphis.....	125.00
E. L. Bruce Co. Box 397, Memphis.....	100.00
Brummer Seal Co., Chicago.....	276.00
G. H. Burnham, Tri-State Oil Tool Co., Inc., P. O. Box 5588, Bossier Branch, Shreveport.....	200.00
J. P. Butler, Midland, Texas.....	100.00
C. & H. Transportation, P. O. Box 5976, Dallas.....	100.00
H. E. Chiles, Jr., 12121 Cuthbert, Midland, Texas.....	100.00
C. Reid Clatterbuck, Bowles Livestock Commission Co. Omaha.....	200.00
Commercial Print and Letter Service, 1015 North Hawkins Dallas.....	100.00
Continental National Bank, Fort Worth.....	372.00
Continental Supply Co., Dallas.....	35,000.00
Cotwell Manufacturing Co., 234 South Fairview Avenue, Spartanburg, S.C.....	442.00
Ed Cox Foundation, Magnolia Building, Dallas.....	100.00
C. M. Crawford, Jr., 9606 Santa Monica Blvd., Beverly Hills, Cal.....	100.00
John F. Cuneo, 2242 South Grove Street, Chicago.....	250.00
Devin-Adair Co., 23 East 26th Street, New York.....	200.20
Dresser Industries, Republic Bank Bldg., Dallas.....	189.00
R. B. Dresser, 15 Westminster, Providence, Rhode Island.....	250.00
Clem W. Drewett, Jena, Louisiana.....	100.00
Glen Drewett, Jena, Louisiana.....	100.00
Duke Transportation Co., P. O. Box 536, Jena, Louisiana.....	1,350.00
Empire Drilling Co., Dallas.....	1,345.00
Exchange Bank and Trust, El Dorado, Ark.....	100.00
First National Bank, Dallas.....	33,000.00
First National Bank, Magnolia, Arkansas.....	100.00
Foundation, Inc., Wichita, Kansas.....	100.00
G. & H. Specialty Co., P. O. Box 1362, Shreveport.....	650.00
Gardner & Denver Co., P. O. Box 5957, Dallas.....	100.00
Philip Geist, 227 Erne Street, Detroit.....	100.00
W. L. Goldston, Oil & Gas Building, Houston.....	500.00
B. A. Hardy, P. O. Box 1237, Shreveport.....	100.00
H. R. Hayes, Monroe, La.....	120.00
E. J. Hudson, Hudson Engineering Corp., Houston.....	1,500.00
Hunsaker Trucking Co., P. O. Box 97, Carrollton, Texas.....	148.00
H. L. Hunt, 700 Mercantile Bank Building, Dallas.....	100,000.00
Hunt Oil Company, 700 Mercantile Bank Bldg., Dallas.....	5,870.87
A. W. Hutchings, Suite 522, Fidelity Union Life Bldg., Dallas.....	200.00
Ingersoll Corp., Shreveport.....	500.00
Jones Apothecary, Inc., 2400 Rice Blvd., Houston.....	100.00
P. G. Lake, Inc., Tyler, Texas.....	1,000.00
Charles H. Lawrence, Jr., P. O. Box 218, Lake Charles, La.....	2,000.00
Lawton Oil Corp., Magnolia, Ark.....	100.00
Levingston Shipbuilders, P.O. Box 411, Orange, Texas.....	875.00
Lewis Sound Films, 71 West 45th St., New York.....	100.00
Lion Oil Co., El Dorado, Ark.....	707.00
Lone Star Cement Corp., New York.....	250.00
Lone Star Steel Co., P.O. Box 8087, Dallas.....	10,200.00
R. L. Lorel, First National Bank Bldg., Dallas.....	100.00

*Purchaser of subscriptions—Continued*

	<i>Amount</i>
Gene McAdams, John Clay & Co. Live Stock Commission, Chicago----	\$100. 00
McAlester Fuel Co., Magnolia, Ark-----	165. 00
John A. McGuire, Pres., Three States Natural Gas Co., 17th Fl., Corrigan Tower Bldg., Dallas-----	100. 00
Memphis Clearing House, Memphis-----	300. 00
Memphis Manufacturing Co., Memphis-----	200. 00
Mercantile National Bank, C. L. Thornton, Chairman of the Board, Dallas-----	500. 00
The Mercantile National Bank, Dallas-----	500. 00
Mid-Continent Supply Co., Fort Worth-----	2, 000. 00
Milwhite Mud Sales Co., 1092 M & M Building, Houston-----	100. 00
Clifford Mooers, Walnut Spring Farm, Route 4, Washington-----	246. 00
Adrian Moore, 2512 Gulf Building, Houston-----	100. 00
Woodroe Moore, P. O. Box 5006, Bossier City, La-----	121. 00
Murphy Corporation, El Dorado, Ark-----	270. 00
National Geophysical Co., Inc., 8800 Lemmon Ave., Dallas-----	714. 00
The New Seven Falls Co., Colorado Springs, Colo-----	5, 000. 00
Padgett Printing Co., Dallas-----	500. 00
Panola Pipeline Company, (Caroline Hunt Trust Estate), 700 Mer- cantile Building, Dallas-----	1, 311. 00
Penrod Drilling Co., 418 Market St., Shreveport-----	1, 320. 00
Placid Oil Co., Shreveport-----	23, 489. 00
Railway Express Agency, New York-----	120. 00
Ralston Feed Yard, 531 Exchange Building, Omaha-----	300. 00
J. B. Razier, Jr., 941 Jefferson, Memphis-----	200. 00
Reef Fields Gasoline Corp., J. R. Butler, Pres., P.O. Box 1661, Big Spring, Texas-----	100. 00
Reef Fields Gasoline Co., 2100 Esperson Building, Houston-----	100. 00
The Republic National Bank, Dallas-----	1, 000. 00
J. E. Rosenlind, Baker Oil Tools, Inc., P.O. Box 2274, Terminal Annex, Los Angeles-----	150. 00
A. H. Rowan, 19th Floor, Fair Bldg., Fort Worth-----	200. 00
Caroline H. Sands, 3546 Caruth, Dallas-----	15, 000. 00
Sayles Biltmore Bleachery, Saylesville, R.I-----	250. 00
Sayles Finishing Plant, Saylesville, R.I-----	250. 00
Clarence Scharbauer, Jr., Midland, Texas-----	162. 00
Seaboard Oil Co., Inc., Dallas-----	383. 00
Sears, Roebuck & Co., Chicago-----	2, 000. 00
Cruger T. Smith, Inc., Dallas-----	500. 00
Forest M. Smith, San Antonio-----	200. 00
L. C. Smith, Alabama Power Co., Birmingham, Ala-----	138. 00
Standard Oil Co., Chicago-----	1, 000. 00
Standard Oil Co. of Indiana, 910 South Michigan Avenue, Chicago--	780. 00
Standard Oil & Gas Co., Tulsa, Okla-----	100. 00
Sunset News Co., 125 North Westmoreland, Los Angeles-----	283. 59
Sweeney Bros. Tractor Co., Fargo, N. Dak-----	250. 00
Temple Hargrove, Box 395, Fildell, La-----	330. 00
Texas Bank & Trust Co., Dallas-----	100. 00
Tri State Oil Co., Box 5583, Shreveport-----	300. 00
Triangle Refineries, Inc., Houston-----	100. 00
United Tool Co., P.O. Box 1383, Shreveport-----	1, 500. 00
U.S. Steel Corp., Oil Well Supply Div., P.O. Box 478, Dallas-----	500. 00
V. J. Waters, Dallas-----	420. 35
Welex Jet Services, Inc., 1400 East Berry St., Fort Worth, Texas--	200. 00
Wilson Supply Co., 1412 Maury St., Houston-----	300. 00
Wilson Supply Co., 1301 Conty St., Houston-----	300. 00
Willson Supply Co., P.O. Drawer 19, Houston-----	300. 00
Morris K. Womack, Houston-----	100. 00
General R. E. Wood, Sears Roebuck, Inc., Chicago-----	1, 000. 00
Total-----	273, 691. 01



Mr. HARDING. I should like to ask a question. Are these the totals for those fiscal years for each of these contributors?

Mr. OLSHIER. Yes, that is correct.

Mr. HARDING. 1954 through '56?

Mr. OLSHIER. For the purposes as identified.

Mr. HARDING. Yes, I understand.

Mr. OLSHIER. On the tax returns.

Mr. HARDING. This was on the Form 990-A?

Mr. OLSHIER. Yes, these figures come from their tax returns, as reported on the Form 990-A.

Mr. HARDING. Yes.

The CHAIRMAN. Has the IRS determined whether the donors classified the "subscriptions donations" as a business expense or as a charitable deduction?

Mr. HARDING. No, sir, to my knowledge, we have not made this analysis.

(Following is the information submitted by the IRS, under date of October 12, 1964.)

The Service has not determined whether the donors (referred to at the September 1 hearing), classified the "subscriptions donations" as a business expense or as a charitable deduction. (The donors referred to were set forth in a listing furnished by you of 114 individuals and organizations said to have contributed a total of \$273,691.01 to the Life Line Foundation for subscription to Facts Forum News during fiscal years 1954 through 1956.)

The question as to how these 144 may have classified such payments during the years 1954 to 1956 is not considered germane to our current consideration of the exempt status of the Life Line Foundation for the fiscal year ended September 30, 1961. To the extent these amounts were claimed as deductions on the income tax returns of the contributors, this would have been an appropriate question at the time their returns were subject to audit. The statute of limitations would, however, normally have run on these returns during the year 1960, and no revenue purpose would be served to have our various field offices search their files and, where necessary, to audit the records of the various individuals and organizations for information on this point.

Since this particular information is not germane to our consideration of the status of the Foundation, as stated above, use of the Service's manpower and audit authority solely to obtain this information does not appear warranted.

The CHAIRMAN. I shall now give you a copy of the schedule showing information we requested from Life Line regarding donations received for subscriptions to Facts Forum News. (See exhibit 41, page 382.)

Tax returns of the Life Line Foundation indicate that 23 donors contributed to the Foundation \$3,049,703.52 during fiscal years 1951 through 1960, excluding donations for subscriptions. According to the Foundation, all such donations were made in cash, and no securities or other property were involved.

Following are the names and addresses of the donors and the amounts contributed to the Foundation, excluding amounts of under \$3,000 received during 1951 and 1952 and excluding amounts of less than \$100 received during 1953 through 1960. In order to save time, I shall insert the information in the record instead of reading it, and give you a copy.

(The insert follows:)

<i>Donor</i>	<i>Amount</i>
Bright Star Foundation, Dallas-----	\$16,750.00
Woffard Cain, Mercantile Bldg., Dallas-----	100.00
Gulf Oil Corp., Houston-----	13,864.70
Gulf Oil Corp., Pittsburgh-----	9,000.00
H. R. Hayes, c/o H. R. Hayes Lumber Co., P.O. Box 1461, Monroe, Louisiana-----	2,000.00
A. G. Hill, Chapel Hill Gas System, Dallas-----	5,000.00
H. L. Hunt, 700 Mercantile Bank Bldg., Dallas-----	2,928,500.00
N. B. Hunt, 700 Mercantile Bank Bldg., Dallas-----	35,000.00
Stuart Hunt, Empire Drilling Co., 1507 Mercantile Bank Bldg., Dallas-----	100.00
Dina F. Lee, Flowerland, Chamblee, Georgia-----	105.00
Lone Star Steel Co., Dallas-----	200.00
W. K. Manning, Fidelity Union Life Bldg., Dallas-----	100.00
George E. Mercer, T. E. Mercer Teaming & Trucking Contractor, 920 North Main Street, Fort Worth-----	500.00
National Geophysical Co., 8800 Lemmon Avenue, Dallas-----	100.00
Ohio Oil Co., Findlay, Ohio-----	6,500.00
Placid Oil Co., Shreveport, Louisiana-----	5,000.00
Querbes & Bourquin, Shreveport, Louisiana-----	200.00
A. L. Reed, 4400 Westway, Dallas-----	100.00
Eldred J. Robinson, Dallas-----	9,883.82
Caroline H. Sands, 3546 Caruth, Dallas-----	10,000.00
Sun Oil Co., Dallas-----	6,500.00
Joe C. Thompson, Southland Corp., 228 North Haskell, Dallas---	100.00
James Ralph Wood, Pres., Southwestern Life Ins. Co., Dallas-----	100.00
Total-----	\$3,049,703.52

Mr. HARDING. Mr. Chairman, I wonder if that is a typographical error on the 1951?

The CHAIRMAN. Through 1960?

Mr. HARDING. I wonder if that was not intended to be 1961.

The CHAIRMAN. No, I think it is correct, 1951 through 1960. Have you looked over the contributions there, Mr. Harding?

Mr. HARDING. In this document that we just got?

The CHAIRMAN. Yes. We wanted you to have time to look at it.

Mr. HARDING. Yes, sir.

The CHAIRMAN. If the Foundation's tax exemption is revoked retroactively, would this affect the deductibility by the donors of the amounts contributed to the Foundation? For example, Mr. H. L. Hunt contributed \$3,008,500 to the Foundation and, presumably, took the maximum deduction on his personal income tax returns. So the question is, if it is revoked retroactively, would this affect the deductibility by the donors?

Mr. HARDING. My counsel informs me, Mr. Chairman, that generally, even though we revoke retroactively, we would not disallow the deduction to the individual making the contribution. If there is evidence of complicity or knowledge of the violation, we would go back and disallow retroactively as to those donors. This would apply to all types of 501(c)(3) organizations.

Mr. CHAIRMAN. You would construe they are made in good faith?

Mr. HARDING. That is the general situation, yes, sir. Since the organization did not know at the time that it made the donation that we were going to revoke, we would not go back on the donor.

The CHAIRMAN. In addition to producing and distributing the program, Life Line, to broadcast stations, do you know that the Life Line Foundation also publishes four pages of political commentary three times weekly entitled, "Life Lines"?

Mr. HARDING. I am aware that they issue a publication, yes, sir.

The CHAIRMAN. According to the Foundation's application for tax exemption, it was organized as an educational corporation for the purpose of conducting small discussion groups. Would you say that this foundation's activities have been confined to "small discussion groups" since these activities now embrace publications, radio, television, and other mass media?

Mr. HARDING. It would not appear so, Mr. Chairman.

The CHAIRMAN. The Foundation's 1962 figures show a profit on radio activities of \$125,472.54 and on the Life Line newspaper of \$32,423.57. Since the Foundation's activities are supposed to be non-profit, would you say that these operations are of such size that the Foundation is now a business and taxable as such, or that these activities are subject to the unrelated business income tax?

Mr. ROGOVIN. Mr. Patman, without prejudicing the Government's case in the Life Line Foundation, and certainly not being an apologist for the organization, in general, the fact that an organization that is otherwise exempt makes a profit, shows a plus figure at the end of the year, does not indicate that it is outside the purview of the exemption provision. The unrelated business income provisions are a recognition that an organization can make a profit as long as it is otherwise exempt both as to its purposes and the manner in which it conducts itself. The unrelated business provisions, sections 511-13 of the statute, also recognize that there are certain related activities.

If you had a foundation that was truly educational and it did publish a magazine and did make a profit, the publication and sale of the editorial content of the magazine would be related and ergo, would not be subject to the unrelated business income tax.

The CHAIRMAN. The Foundation shows travel expenses totaling \$60,124.32 for fiscal years 1954 through 1957. We have not as yet been able to examine Life Line's travel expenses for 1958 through 1963. Why should this Foundation need to incur such a large amount of travel expenses?

Mr. HARDING. I cannot explain that at this point, Mr. Chairman.

The CHAIRMAN. The Foundation's travel expenses include the following reimbursements to H. D. Smoot, Dallas:

Oct. 8, 1953.....	\$270. 66
Oct. 20, 1953.....	270. 66
Nov. 3, 1953.....	270. 66
Nov. 22, 1953.....	270. 66
Dec. 2, 1953.....	270. 66
Jan. 15, 1954.....	270. 66
Jan. 21, 1954.....	270. 66
Feb. 3, 1954.....	270. 66
Feb. 23, 1954.....	270. 66
March 10, 1954.....	270. 66
March 19, 1954.....	270. 66
April 8, 1954.....	270. 66
July 6, 1954.....	270. 66
July 19, 1954.....	270. 66
1954 (month and day is illegible).....	270. 66
Aug. 16, 1954.....	270. 66
Sept. 1, 1954.....	270. 66
Sept. 13, 1954.....	270. 66
Sept. 24, 1954.....	270. 66

Would you agree that it is a bit unusual to incur travel expenses which are identical to the penny in 19 instances?

Mr. HARDING. It strikes me as somewhat unusual unless he was going to the same places for precisely the same amount of time.

The CHAIRMAN. Has the IRS examined these travel expenses to determine whether they may be taxable as income to the recipients?

Mr. HARDING. Not to my knowledge.

The CHAIRMAN. Again as a time-saver, I shall insert in the record at this point details of travel expenses paid to each individual for the years 1954 through 1957, instead of reading them, and shall give you a copy.

Mr. HARDING. Thank you.

The CHAIRMAN. You have a copy there, Mr. Harding?

Mr. HARDING. Yes, sir.

(The insert follows:)

FACTS FORUM, INC.

Travel Expenses

YEAR ENDED 9/30/54

Date	Ref.	Payee	Amount
10- 8-53-----	2306	H. D. Smoot, 6038 Kenwood, Dallas, Texas.	\$270. 66
10- 8-53-----	2333	Robert H. Dedman, 6130 Delroy Drive, Dallas, Texas.	9. 80
10- 8-53-----	2343	John Dale-----	9. 60
10- 8-53-----	2353	Mercantile Commerce Garage, Dallas, Texas.	108. 12
10- 8-53-----	2357	Mayflower Hotel, Dallas Texas.	28. 30
10- 8-53-----	2362	William Sauhering, Jr., 342 Madison Avenue, New York City, New York.	99. 34
10-14-53-----	2387	Mayflower Hotel-----	*
10-16-53-----	2395	Peter Hoguet, 47 E. 92nd Street, New York City, New York.	80. 80
10-20-53-----	2403	H. D. Smoot-----	250. 00
10-20-53-----	2404	Robert H. Dedman-----	*
10-23-53-----	2410	Peter Hoguet-----	270. 66
10-26-53-----	2416	Meredith Howard Harless, 2440 Kalorama Road, N.W., Wash- ington, D.C.	8. 95
10-19-53-----	JE11	Jan Lindermann, Hotel Ansonia, 73rd and Broadway, New York City, New York.	225. 00
11- 3-53-----	2426	H. D. Smoot-----	227. 96
11- 3-53-----	2427	do-----	*
11- 9-53-----	2447	Mercantile Commerce Garage-----	250. 00
11- 9-53-----	2489	William Sauhering, Jr-----	*
11- 9-53-----	2494	H. L. Hunt, 700 Mercantile Bank Bldg., Dallas, Texas.	270. 66
11- 9-53-----	2495	Felix Harris & Company-----	43. 87
11-10-53-----	2497	Mayflower Hotel-----	76. 09
11-11-53-----	2501	Meredith Howard Harless-----	*
11-17-53-----	2508	Guy Wallace, 191 Green Avenue, Freeport, L.I., New York.	122. 35
11-17-53-----	2509	Robert H. Dedman-----	75. 00
11-17-53-----	2510	Zell L. Howell, 6231 Vickery Blvd., Dallas, Texas.	157. 50
11-18-53-----	2512	G. P. Steighorst, 4241 Emerson Avenue, Dallas, Texas.	65. 69
11-19-53-----	2513	Mercantile National Bank (American Airlines for Wm. McCallum).	263. 45
			74. 75
			10. 85
			25. 95
			255. 22
			89. 13

FACTS FORUM, INC.—Continued

Travel Expenses—Continued

YEAR ENDED 9/30/54—Continued

Date	Ref.	Payee		Amount
11-19-53	2514	Peter Hoguet	*	398.27
11-22-53	2526	H. D. Smoot	*	270.66
11-24-53	2528	G. P. Steighorst	*	211.11
11-25-53	2529	Guy Wallace	*	174.43
11-27-53	2532	H. D. Smoot	*	66.45
11-27-53	2534	Wm. O. McCallum, 519 E. 9th, Irving, Texas.		347.05
12- 2-53	2546	Peter Hoguet	*	377.20
12- 2-53	2547	Mayflower Hotel	*	99.65
12- 2-53	2551	H. D. Smoot	*	270.66
12- 2-53	2552	G. P. Steighorst	*	238.74
12- 4-53	2556	do	*	245.27
12- 4-53	2557	Guy Wallace	*	20.46
12- 7-53	2558	Petty Cash		2.00
12- 7-53	2574	Hine Pontiac, Dallas, Texas		18.50
12- 7-53	2580	Mercantile Commerce Garage	*	125.42
12- 7-53	2605	Fan and Bill's Inc.		4.95
12- 7-53	2623	Mohr Chevrolet Company, Dallas, Texas.		9.82
12- 8-53	2637	Guy Wallace	*	88.06
12-15-53	2651	W. T. Hyde		304.84
12-15-53	2652	G. P. Steighorst	*	436.73
12-16-53	2653	Guy Wallace	*	95.41
12-16-53	2654	H. D. Smoot	*	76.45
12-16-53	2655	Wm. Sauhering, Jr.	*	154.43
12-18-53	2671	H. D. Smoot	*	270.00
12-18-53	2672	Wm. O. McCallum	*	356.01
12-23-53	2674	Guy Wallace	*	80.75
12-23-53	2676	Meredith Howard Harless	*	400.21
12-23-53	2681	Mayflower Hotel	*	60.07
12-31-53	2691	Peter Hoguet	*	463.02
12-31-53	2692	Meredith Howard Harless	*	281.81
12-31-53	2693	H. D. Smoot	*	104.45
1- 8-54	2720	Guy Wallace	*	80.59
1-12-54	2729	Mohr Chevrolet Company	*	30.28
1-12-54	2730	Mercantile Commerce Garage	*	80.36
1-12-54	2733	H. L. Hunt	*	211.63
1-12-54	2741	Advertising Specialty Co.		37.84
1-12-54	2747	Hine Pontiac	*	5.25
1-12-54	2757	Stewart Office Supply Co., Dallas, Texas		36.29
1-12-54	2795	Pat Corder, 7020 Forest Lane, Dallas, Texas		19.33
1-12-54	2798	Mayflower Hotel		45.83
1-12-54	2800	Pat Corder	*	15.00
1-15-54	2814	H. D. Smoot	*	270.66
1-15-54	2816	Guy Wallace	*	79.32
1-18-54	2822	Wm. Sauhering, Jr.	*	80.65
1-21-54	2824	H. D. Smoot	*	56.45
1-21-54	2825	do	*	270.66
1-21-54	2826	Peter Hoguet	*	933.31
1-21-54	2827	Meredith Howard Harless	*	273.03
1-26-54	2850	H. D. Smoot	*	76.45
1-26-54	2853	Robert H. Dedman	*	51.49
1-28-54	2866	Guy Wallace	*	84.39
2- 1-54	2868	H. D. Smoot	*	113.05
2- 1-54	2869	W. T. Hyde		415.74
2- 2-54	2871	Guy Wallace	*	69.82

## 240 TAX-EXEMPT FOUNDATIONS: IMPACT ON SMALL BUSINESS

FACTS FORUM, INC.—Continued

Travel Expenses—Continued

YEAR ENDED 9/30/54—Continued

Date	Ref.	Payee		Amount
2- 3-54	2872	H. D. Smoot	*	270. 66
2- 4-54	2883	do	*	152. 93
2- 4-54	2885	Meredith Howard Harless	*	253. 59
2- 4-54	2887	Guy Wallace	*	119. 95
2- 5-54	2889	Mayflower Hotel	*	49. 09
2- 5-54	2890	Fan and Bill's		29. 56
2- 8-54	2906	Adolphus Hotel, Dallas, Texas		79. 14
2- 8-54	2907	Petty cash		20. 00
2-8-54	2908	Karl Hess, Adolphus Hotel, Dallas, Texas.		140. 00
2-9-54	2936	Mercantile Commerce Garage	*	98. 88
2-10-54	2990	Clarence Streit		44. 42
2-10-54	2992	American Airlines		102. 35
2-15-54	2996	John Patrick McCullough, 51 Greenwich Avenue, New York City, New York.		22. 50
2-18-54	3009	Robert H. Dedman	*	7. 15
2-18-54	3014	Mayflower Hotel	*	26. 88
2-19-54	3019	Hotel Adolphus	*	54. 25
2-23-54	3024	H. D. Smoot	*	270. 66
2-26-54	3033	do	*	144. 25
2-26-54	3036	Peter Hoguet	*	173. 39
2-27-54	3037	John Patrick McCullough	*	104. 00
2- 5-54		Reimbursement		42. 78
2-15-54		do		10. 00
2-12-54	JE20	Karl Hess	*	95. 00
2-28-54	JE21	H. D. Smoot	*	130. 34
3- 4-54	3044	John Patrick McCullough	*	46. 35
3-10-54	3047	H. D. Smoot	*	270. 66
3-10-54	3085	Hine Pontiac	*	9. 96
3-10-54	3089	Petty Cash		5. 00
3-10-54	3111	Mercantile Commerce Garage	*	93. 86
3-10-54	3120	Fan and Bill's		19. 50
3-13-54	3139	H. D. Smoot	*	90. 00
3-17-54	3143	Meredith Howard Harless	*	118. 73
3-18-54	3153	Mayflower Hotel	*	52. 93
3-19-54	3167	H. D. Smoot	*	270. 66
3-22-54	3170	Pat Corder	*	20. 56
3-29-54	3181	Robert H. Dedman	*	4. 19
3-30-54	3185	H. D. Smoot	*	153. 10
4- 2-54	3192	I. Keith Taylor		11. 50
4- 5-54	3193	American Airlines		133. 43
4- 8-54	3212	H. D. Smoot	*	270. 66
4-12-54	3254	Mercantile Commerce Garage	*	92. 55
4-12-54	3255	Fan and Bill's, Inc.		41. 72
4-12-54	3256	Mayflower Hotel	*	30. 08
4-12-54	3257	Mohr Chevrolet Company	*	50. 01
4-12-54	3258	Sammy's Fine Restaurant, Dal- las, Texas.		72. 50
4-13-54	3286	Shirley Arnold Hobbs, 4718 LaHoma, Dallas, Texas.		292. 04
4-15-54	3294	H. D. Smoot	*	345. 75
4-15-54	3298	Robert H. Dedman	*	113. 89
4-19-54	3302	Hotel Statler, Dallas, Texas		42. 56
4-20-54	3318	Robert H. Dedman	*	7. 15
5-3-54	3326	H. D. Smoot	*	55. 15
5-7-54	3329	Meredith Howard Harless	*	113. 97
5-11-54	3332	Petty Cash		1. 35

## TAX-EXEMPT FOUNDATIONS: IMPACT ON SMALL BUSINESS 241

## FACTS FORUM, INC.—Continued

## Travel Expenses—Continued

YEAR ENDED 9/30/54—Continued

Date	Ref.	Payee	Amount
5-11-54	3376	Fan & Bill's, Inc	3.16
5-11-54	3377	Mohr Chevrolet Company	30.05
5-11-54	3378	The Mayflower	35.65
5-11-54	3379	Mercantile Commerce Garage	89.94
5-14-54	3418	H. D. Smoot	175.35
5-14-54	3420	Zell Howell	23.93
5-21-54	3442	H. L. Hunt	200.00
5-28-54	3470	H. D. Smoot	201.50
6- 2-54	3474	Zell Howell	23.98
6- 7-54	3507	Mercantile Commerce Garage	101.97
6- 7-54	3534	Robert H. Dedman	5.12
6-25-54	3569	H. D. Smoot	326.75
6-25-54	3571	Robert H. Dedman	5.18
6-25-54	3573	A. B. Cuddihy, Jr., 70 Pine- wood Gardens, Hartsdale, N.Y.	538.36
6-26-54	3577	Hardy Burt	413.05
6-23-54	3595	Frances Cray, 2007 Hunting- ton, Arlington, Texas.	6.05
6-30-54	3603	Robert H. Dedman	17.75
6-30-54	3604	A. B. Cuddihy, Jr	44.80
(1)	CR36	do	155.28
7- 1-54	3613	H. D. Smoot	162.90
7- 6-54	3622	A. B. Cuddihy, Jr	41.65
7- 6-54	3623	H. D. Smoot	270.66
7- 8-54	3626	Petty Cash	1.95
7- 8-54	3662	Mohr Chevrolet Company	2.20
7- 8-54	3663	Mercantile Commerce Garage	95.62
7- 9-54	3689	L. W. Cameron	14.30
7-13-54	3715	H. D. Smoot	75.70
7-13-54	3716	Hardy Burt	82.75
7-16-54	3730	Hine Pontiac	9.55
7-19-54	3733	H. D. Smoot	270.66
(1)	3749	A. B. Cuddihy, Jr	483.64
(1)	3750	Mayflower Hotel	58.49
(1)	3754	Arvo Goddens	21.38
(1)	3758	H. D. Smoot	109.65
(1)	3760	do	270.66
8- 6-54	3774	Fan and Bill's, Inc	14.83
8- 6-54	3812	Mayflower Hotel	50.26
8- 6-54	3813	Mohr Chevrolet Co	49.50
8- 9-54	3834	H. D. Smoot	44.44
8-10-54	3846	Hardy Burt	98.08
8-11-54	3851	A. B. Cuddihy, Jr	79.70
8-13-54	3852	Robert H. Dedman	10.12
8-13-54	3859	Shank, Dedman and Payne, Dallas, Texas.	3.63
8-16-54	3863	H. D. Smoot	270.66
8-16-54	3864	do	73.00
8-31-54	3891	A. B. Cuddihy, Jr	96.76
9- 1-54	3902	H. D. Smoot	270.66
9- 1-54	3903	do	83.25
9- 1-54	3904	Robert H. Dedman	7.25
9- 1-54	3920	Mercantile Commerce Garage	184.57
9- 7-54	3943	The Mayflower	114.33
9- 8-54	3961	Fan and Bill's	12.22

(1) Date not legible.

## 242 TAX-EXEMPT FOUNDATIONS: IMPACT ON SMALL BUSINESS

## FACTS FORUM, INC.—Continued

## Travel Expenses—Continued

## YEAR ENDED 9/30/54—Continued

Date	Ref.	Payee		Amount
9-13-54-----	3978	H. D. Smoot-----	*	270. 66
9-15-54-----	3980	do-----	*	77. 80
9-15-54-----	3990	Hardy Burt-----		116. 05
9-23-54-----	4008	Beth Anderson Rachal, 3109 McKinney, Dallas, Texas.		70. 00
9-23-54-----	4009	Frances Ferguson Crary-----	*	104. 88
9-24-54-----	4011	H. D. Smoot-----	*	270. 66
9-30-54-----	4016	Zell Howell-----	*	36. 30
9-30-54-----	4018	H. D. Smoot-----	*	240. 60
9-30-54-----	4020	A. B. Cuddihy, Jr-----	*	298. 59
		Total, Year Ended 9/30/54-----		\$25, 244. 45

## YEAR ENDED 9/30/55

(1)-----	4024	H. D. Smoot-----	*	\$91. 69
(1)-----	4042	Mercantile Commerce Garage---	*	95. 60
(1)-----	4043	Mohr Chevrolet Company-----	*	43. 93
(1)-----	4044	Greater Dallas Motors, Dallas, Texas-----		16. 73
(1)-----	4107	H. D. Smoot-----	*	170. 38
10-29-54-----	4135	Medford Evans, Route 5, Box 53-K, Abilene, Texas-----		182. 86
10-31-54-----	4140	H. D. Smoot-----	*	163. 95
10-31-54-----	CR40	do-----		(26. 80)
11-9-54-----	4160	Hargett Electric Company, Inc., Dallas, Texas-----		19. 06
11-9-54-----	4186	Mercantile Commerce Garage---	*	108. 78
11-18-54-----	4272	H. D. Smoot-----	*	89. 50
11-19-54-----	4275	Robert H. Dedman-----	*	10. 35
11-19-54-----	4276	Marjorie K. Mars, 4731 W. Pur- due, Dallas, Texas-----		102. 76
11-24-54-----	4280	Medford B. Evans-----	*	265. 00
11-27-54-----	4285	John W. Manning, 35-13 76th Street, Jackson Heights 72, N.Y.-----		99. 90
11-29-54-----	4288	William Fowler, 54-15 Gaston Avenue, Dallas, Texas-----		11. 90
11-29-54-----	4289	Medford Evans-----	*	186. 01
11-29-54-----	4290	H. D. Smoot-----	*	140. 10
12-7-54-----	4304	John W. Manning-----	*	167. 35
12-15-54-----	4408	H. D. Smoot-----	*	136. 60
12-15-54-----	4419	Mercantile Commerce Garage---	*	147. 18
12-21-54-----	4454	Robert H. Dedman-----	*	15. 10
12-28-54-----	4467	John Manning-----	*	98. 40
12-29-54-----	4479	H. D. Smoot-----	*	165. 00
12-30-54-----	4482	Mary Graves, 6371 Oriole Drive, Dallas, Texas-----		6. 40
1-5-55-----	4497	O. M. Spence, 3927 Cole Avenue, Apt. 106, Dallas, Texas-----		3. 75
1-6-55-----	4508	Marjorie K. Mars-----	*	186. 01
1-6-55-----	4511	Medford Evans-----	*	492. 40
1-6-55-----	4512	John Manning-----	*	40. 00
1-14-55-----	4532	H. D. Smoot-----	*	119. 65
1-27-55-----	4678	H. D. Smoot-----	*	91. 69

<sup>1</sup> Date not legible.



## FACTS FORUM, INC.—Continued

## Travel Expenses—Continued

YEAR ENDED 9/30/55—Continued

Date	Ref.	Payee		Amount
1-28-55	4683	Medford Evans	*	317.80
1-14-55	4532	H. D. Smoot	*	119.65
1-18-55	4567	Mercantile Commerce Garage	*	112.83
1-18-55	4643	Medford Evans	*	186.01
1-18-55	4649	Hine Pontiac	*	101.11
1-27-55	4678	H. D. Smoot	*	91.69
1-28-55	4683	Medford Evans	*	317.80
1-31-55	4687	H. D. Smoot	*	172.00
1-31-55	4690	O. M. Spence	*	124.30
(1)	4705	John W. Manning	*	141.08
(1)	4777	Mercantile Commerce Garage	*	117.93
(1)	4778	Matthews Drive-Ur-Self Serv- ices		10.30
(1)	JE39	E. Howard Goodwin, 3709 Cole Avenue, Dallas, Texas.		610.49
(1)	4716	O. M. Spence	*	139.69
(1)	4717	Dan Smoot	*	133.65
(1)	4829	Dayton Biltmore Hotel		58.32
(1)	4853	Medford Evans	*	66.66
(1)	4861	do	*	203.00
(1)	4862	Jan Lindermann	*	273.14
(1)	4866	H. D. Smoot	*	135.00
(1)	4870	Jan Lindermann	*	242.90
(1)	4884	do	*	181.49
(1)	4886	V. J. Waters		694.71
(1)	4893	Blackburn Hughes, P.O. Box 720, Memphis, Tenn.		89.20
(1)	4914	Robert H. Dedman	*	5.35
(1)	4919	Carey Drive-Ur-Self, Inc.		34.25
(1)	4967	Mercantile Commerce Garage	*	163.87
(1)	4976	Hine Pontiac	*	131.44
(1)	4978	Garrett Hotel		20.03
(1)	4980	Hotel Farraguet		20.31
(1)	4916	Robert H. Dedman	*	7.15
(1)	5000	O. M. Spence	*	66.66
(1)	5003	H. D. Smoot	*	151.50
(1)	5005	James L. Ewing, III, 2216 Island Prince, Monroe, La.		152.50
(1)	5024	John Convery		134.23
(1)	5027	Jan Lindermann	*	189.13
(1)	5041	Robert H. Dedman	*	12.95
(1)	5050	Medford Evans	*	28.27
(1)	5051	do	*	77.00
(1)	5053	Classified Parking System, Dallas, Texas.		20.00
(1)	5054	Dr. Fred C. Schwarz		180.00
(1)	5059	Josephine Evans, 2242 S. 34th St., Abilene, Texas.		11.00
(1)	5060	James L. Ewing, III	*	65.00
(1)	5062	Jan Lindermann	*	253.23
(1)	5079	H. D. Smoot	*	116.00
(1)	5090	Blackburn Hughes	*	99.34
(1)	5091	John Convery		336.02
(1)	5095	Ashbaugh Auto Rental Service		29.56
(1)	5099	O. M. Spence	*	133.07
(1)	5101	Medford Evans	*	35.00
(1)	5109	Jan Lindermann	*	348.57

<sup>1</sup> Date not legible.

## 244 TAX-EXEMPT FOUNDATIONS: IMPACT ON SMALL BUSINESS

FACTS FORUM, INC.—Continued

Travel Expenses—Continued

YEAR ENDED 9/30/55—Continued

Date	Ref.	Payee	Amount
(1) -----	5121	A & P Drive-Ur-Self Co.-----	7. 94
(1) -----	5136	Motorent, Inc.-----	31. 17
(1) -----	5141	Hotel Jefferson, Dallas, Texas.---	11. 42
(1) -----	5152	The Hotel Raleigh-----	149. 60
(1) -----	5153	Hotel Patton-----	31. 76
(1) -----	5180	Hotel Schroeder-----	19. 70
(1) -----	5214	Mercantile Commerce Gargac.---	94. 87
(1) -----	5236	The Conrad Hilton, Dallas, Texas.-----	54. 79
(1) -----	5264	The Shamrock Hotel.-----	127. 37
(1) -----	JE63	E. Howard Goodwin.-----	269. 51
(1) -----	JE64	Vic Waters-----	879. 65
(1) -----	4894	Jan Lindermann-----	180. 60
(1) -----	4902	Medford Evans-----	115. 00
(1) -----	4903	Jan Lindermann-----	160. 09
(1) -----	4906	John Convery-----	119. 91
(1) -----	5085	Marjorie Mars-----	133. 43
(1) -----	5106	Medford Evans-----	37. 00
(1) -----	5111	O. M. Spence-----	183. 81
(1) -----	5188	Robert H. Dedman-----	12. 25
(1) -----	5189	Classified Parking System-----	20. 00
(1) -----	5202	John Convery-----	233. 20
(1) -----	5203	H. D. Smoot-----	122. 50
(1) -----	5233	Jan Lindermann-----	324. 14
(1) -----	5254	Medford Evans-----	33. 00
(1) -----	5274	Hotel Washington-----	87. 22
(1) -----	5283	Jan Lindermann-----	283. 47
(1) -----	5284	H. D. Smoot-----	140. 00
(1) -----	5288	John Convery-----	317. 71
(1) -----	5335	Blackburn Hughes-----	75. 30
(1) -----	5445	Mercantile Commerce Garage---	119. 66
(1) -----	5448	Hotel Commodore-----	100. 11
(1) -----	JE72	Medford Evans-----	500. 00
(1) -----	JE73	do-----	39. 50
(1) -----	JE74	Mrs. Josephine Evans-----	7. 00
(1) -----	JE75	John Manning-----	500. 00
(1) -----	JE76	Marjorie Mars-----	387. 47
(1) -----	JE88	O. M. Spence-----	1, 050. 00
(1) -----	5312	Josephine Evans-----	25. 00
(1) -----	5313	Medford Evans-----	20. 00
(1) -----	5314	Freda Uttey-----	165. 99
(1) -----	5329	Jan Lindermann-----	340. 72
(1) -----	5348	H. D. Smoot-----	160. 35
(1) -----	5349	Jan Lindermann-----	194. 67
(1) -----	5353	Marjorie Mars-----	118. 80
(1) -----	5356	John Convery-----	313. 17
(1) -----	5398	Jan Lindermann-----	196. 47
(1) -----	5479	Mrs. R. S. Hjelmseth-----	27. 61
(1) -----	5491	H. D. Smoot-----	80. 85
(1) -----	5492	Medford Evans-----	78. 00
(1) -----	5499	John Convery-----	373. 54
(1) -----	5519	Blackburn Hughes-----	88. 32
(1) -----	5523	Wm. H. Bertenshaw, 25 St. Lawrence Ave., Maplewood, N.J.-----	33. 98

<sup>1</sup> Date not legible.

FACTS FORUM, INC.—Continued

Travel Expenses—Continued

YEAR ENDED 9/30/55—Continued

Date	Ref.	Payee		Amount
(1)-----	5563	Hotel Statler-----	*	78. 11
(1)-----	5567	Jan Lindermann-----	*	330. 20
(1)-----	5570	Mercantile Commerce Garage-----	*	104. 21
(1)-----	5573	Hotel Adolphus-----	*	93. 08
(1)-----	5635	Robert H. Dedman-----	*	7. 00
(1)-----	5656	American Airlines-----		163. 24
(1)-----	5674	John Convery-----		174. 35
(1)-----	5676	do-----		285. 86
(1)-----	5704	Blackburn Hughes-----		39. 27
(1)-----	5748	Mercantile Commerce Garage-----	*	45. 90
(1)-----	5642	John Convery-----		385. 27
(1)-----	5777	do-----		275. 32
(1)-----	5785	Joan Powers, 7642 Eastern, Apt. 6, Dallas, Texas.		1. 40
(1)-----	5860	John Convery-----		172. 85
(1)-----	5878	do-----		336. 69
(1)-----	5933	Shank, Dedman & Payne, Dal- las, Texas.		10. 40
(1)-----	5971	John Convery-----		303. 76
(1)-----	6008	do-----		323. 43
		Total, Year Ended 9/30/55-----		\$22,682. 23

YEAR ENDED 9/30/56

(1)-----	6046	American Airlines-----		\$101. 75
(1)-----	6061	John Convery-----		308. 91
(1)-----	6094	Sherwood Entwistle, 3755 Dun- haven Rd., Dallas, Texas.		46. 00
(1)-----	6114	John Convery-----		369. 41
(1)-----	6198	do-----		334. 40
(1)-----	6216	do-----		355. 20
(1)-----	6276	Z. E. Marvin, III, 3921 Euclid, Dallas, Texas.		241. 13
(1)-----	6295	John Convery-----		332. 04
(1)-----	6306	Z. E. Marvin, III-----	*	152. 19
(1)-----	6312	John Convery-----		316. 14
(1)-----	6357	Z. E. Marvin, III-----	*	157. 06
(1)-----	6426	do-----	*	465. 23
(1)-----	6429	John Convery-----		310. 00
(1)-----	6482	do-----		150. 00
(1)-----	6483	Z. E. Marvin, III-----	*	383. 08
(1)-----	6515	do-----	*	298. 09
(1)-----	6519	John Convery-----		140. 00
(1)-----	6596	do-----		417. 08
(1)-----	6624	Z. E. Marvin, III-----	*	349. 23
(1)-----	6709	T. O. K. Burleson, 6212 Junicos, Dallas, Texas.		39. 05
(1)-----	6712	Walter Schultz, 2305 S. Marsalis Ave., Dallas, Texas.		34. 29
(1)-----	6728	Sherwood Entwistle-----	*	8. 83
(1)-----	JE262	Z. E. Marvin, III-----	*	486. 41
(1)-----	JE276	Dave Schaffnit, 5630 Stanford, Dallas, Texas.		174. 70

<sup>1</sup> Date not legible.

FACTS FORUM, INC.—Continued

Travel Expenses—Continued

YEAR ENDED 9/30/56—Continued

Date	Ref.	Payee		Amount
(1)-----	6939	Pitney-Bowes, Inc., Dallas, Texas.	-----	2. 00
(1)-----	6924	Sherwood Entwistle-----	*	12. 88
(1)-----	6963	do-----	*	15. 17
(1)-----	6972	John Convery-----	-----	201. 05
(1)-----	6974	Z. E. Marvin, III-----	*	338. 68
(1)-----	JE287	Sherwood Entwistle-----	*	261. 37
(1)-----	7020	Z. E. Marvin, III-----	*	17. 19
(1)-----	7054	do-----	*	62. 55
(1)-----	7055	Allen Hundley, 1723-D Pratt St., Dallas, Texas.	-----	30. 00
(1)-----	7146	Thomas Massey, 3856 Shore Crest Dr., Dallas, Texas.	-----	11. 24
(1)-----	JE305	Dave Schaffnit-----	*	202. 43
(1)-----	JE306	Maurice Howell, Box 172, Dallas, Texas.	-----	223. 44
(1)-----	JE311	Thomas Massey-----	*	200. 00
(1)-----	JE321	Maurice Howell-----	*	69. 82
(1)-----	JE325	Allen Hundley-----	*	199. 96
(1)-----	7315	Jack McDowell, Jr., 4106 Prescott Ave., Dallas, Texas.	-----	119. 14
(1)-----	7331	Thomas Massey-----	*	7. 66
(1)-----	7347	Jack McDowell-----	*	147. 34
(1)-----	7348	Allen Hundley-----	*	13. 87
(1)-----	7349	Maurice Howell-----	*	112. 71
(1)-----	JE335	do-----	*	154. 05
(1)-----	JE336	Thomas Massey-----	*	350. 00
(1)-----	JE337	Allen Hundley-----	*	200. 00
(1)-----	JE338	P. L. Haney, 7422 Yamini Dr., Dallas, Texas.	-----	265. 76
Total, Year Ended 9/30/56				\$9, 189. 43

YEAR ENDED 9/30/57

10-15-56-----	7412	Thomas Massey-----	*	\$12. 12
10-16-56-----	7415	Maurice Howell-----	*	227. 77
11- 2-56-----	7460	Jack McDowell-----	*	488. 00
11-15-56-----	7464	P. L. Haney-----	*	20. 67
11-15-56-----	7465	S. R. Entwistle-----	*	11. 47
11-15-56-----	7466	Allen Hundley-----	*	6. 15
11-21-56-----	7530	Jack McDowell-----	*	42. 22
12- 3-56-----	7544	Maurice T. Howell-----	*	464. 87
Aug.-Oct. 1956	JE358	Dave Schaffnit-----	*	176. 67
Oct. and Nov. 1956.	JE359	S. R. Entwistle-----	*	160. 00
Nov. 1956-----	JE360	Jack McDowell-----	*	300. 00
Oct. and Nov. 1956.	JE373	Maurice Howell-----	*	300. 00
Nov. and Dec. 1956.	JE384	Thomas Massey-----	*	400. 00
	JE385	Dave Schaffnit-----	*	164. 03
Oct. and Nov. 1956.	JE383	P. L. Haney-----	*	234. 24
Total, Year Ended 9/30/57.				\$3, 008. 21

<sup>1</sup> Date not legible.

*Supplement to Travel Expenses Analysis*

YEAR ENDED 9/30/54

Date	Ref.	Reimbursement of expenses for—	Amount
11- 9-53	2494	Charles W. McBurney.....	\$75. 00
1-12-54	2733	W. F. Hyde, 2015 Meriwether Road, Shreve- port, Louisiana.	211. 63
5-21-54	3442	Karl Hess, Adolphus Hotel, Dallas, Texas....	200. 00

NOTE.—These amounts were originally reported to you as traveling expenses of Mr. H. L. Hunt. Further examination shows that these amounts are reimbursements to Mr. Hunt for traveling expenses of the individuals named above.

Some contributions received by the Life Line Foundation were in odd amounts as shown below.

Donor	Year	Amount
Gulf Oil Corp., Houston.....	1952	\$8, 864. 70
Eldred J. Robinson, Dallas.....	1960	9, 883. 82
Devon-Adair Co., 23 E. 26th Street, New York, N.Y.....	1955	200. 20
Hunt Oil Co., 700 Mercantile Bank Bldg., Dallas, Texas....	1955	1, 793. 37
	1956	3, 236. 50
Sunset News Co., 125 N. Westmoreland, Los Angeles, California.....	1955	283. 59
V. J. Waters, Dallas, Texas.....	1955	420. 35

Can you think of any reason as to why these contributions were made in odd amounts?

Mr. HARDING. Not offhand, Mr. Chairman, I cannot.

The CHAIRMAN. We should like to have the IRS check the records of the Life Line Foundation and submit an explanation of the odd amounts for purposes of this hearing record. Can you do that?

Mr. HARDING. We shall do the best we can, Mr. Chairman.

(Following is the information submitted by the IRS, under date of October 2, 1964.)

While this information is not available in the files of the Service, we have, however, requested our field offices to attempt to obtain information from certain of the "contributors" of these amounts. In one instance, we have been advised that the amount listed represented the percentage due the foundation on a series of payments for the use of Life Line broadcasts.

The CHAIRMAN. During fiscal year ending September 30, 1955, \$13,-794.21 was spent for Facts Forum poll cards. Please submit for purposes of this hearing record the subject of each poll and the results of each poll.

Mr. HARDING. If we can obtain that information, we shall be happy to submit it.

(Following is the information submitted by the IRS, under date of October 2, 1964.)

The information is not available in the Service's files, and as previously explained, an audit by the Service solely to obtain this particular information does not seem warranted.

The CHAIRMAN. You are hereby requested to submit to this Subcommittee by October 12, 1964 a written report of the IRS findings and decision respecting the Life Line Foundation's tax exemption. Will you be in a position to do that, Mr. Harding?

Mr. HARDING. Mr. Chairman, could we leave that open for discussion between us?

The CHAIRMAN. We shall leave it open and discuss it with you, if there is any doubt about it.

(Following is the information submitted by the IRS, under date of October 12, 1964.)

The Service's National office initiated an examination by the Baltimore District office of this Foundation's activities and its qualifications for continued exemption on June 4, 1962. As you were apparently advised by the organization, the District office completed its examination of the Foundation's return for the fiscal year ended September 30, 1961, and on March 8, 1963, forwarded a recommendation that its exemption be withdrawn. Thereafter, the District office was requested to develop certain additional information and this was submitted to the National office on October 17, 1963.

Under our published procedures, the organization is entitled to submit a brief and appear in a conference here in the National office before final action is taken on the District office recommendation.

The National office has completed its study of the District office report and recommendation, and a brief filed with the District office by the Foundation. By letter dated September 30, 1964, the Foundation was advised of its right to submit an additional legal brief to the National office and invited to a conference on the matter here on October 27, 1964. At the request of representatives of the Foundation the conference was rescheduled for November 17, 1964.

Again, I am not in position at this time to report to you on the issues and findings in this case. Once the matter has been concluded and a final decision reached, I shall be glad to furnish you with a more detailed report, consistent with pertinent provisions of the disclosure statutes and good administrative practices.

At this point, I shall insert in the record the following items regarding Life Line Foundation, Inc.:

Exhibits 30 through 36. Correspondence between the Foundation and the IRS, as submitted to us by the Foundation. (See pages 366-375.)

Exhibit 37. Names, addresses and occupations of directors of the Foundation at the close of each of years 1951 through 1962. (See pages 376-377.)

Exhibit 38. Names and addresses of officers of the Foundation at the close of each of the years 1951 through 1962. (See page 378.)

Exhibit 39. Schedule of the Foundation's loans and notes payable during fiscal years 1951 through 1962. (See page 379.)

Exhibit 40. Schedule showing details of contributions received as submitted by the Foundation, excluding amounts of under \$3,000 received during 1951 and 1952 and excluding amounts of less than \$100 received during 1953 through 1960. (See pages 380-381.)

Exhibit 41. Schedule showing details of receipts from subscriptions to Facts Forum News as submitted by the Foundation, excluding contributions of less than \$100. (See pages 382-392.)

The CHAIRMAN. We would like to take a 10-minute recess. Would that be satisfactory?

Mr. HARDING. Certainly.

The CHAIRMAN. Very well, we shall resume here in ten minutes. (At this point a short recess was taken.)

The CHAIRMAN. The Committee will resume. In view of our conversation, Mr. Harding, we shall recess the Committee until Friday morning at 10 o'clock.

Thank you, gentlemen, both of you, for your attendance and your appearance.

(Whereupon, at 11 :25 a.m., September 1, 1964, the subcommittee was adjourned, to reconvene at 10 a.m., Friday, September 4, 1964.)

## TAX-EXEMPT FOUNDATIONS: THEIR IMPACT ON SMALL BUSINESS

FRIDAY, SEPTEMBER 4, 1964

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE No. 1 ON FOUNDATIONS  
OF THE SELECT COMMITTEE TO CONDUCT STUDIES AND  
INVESTIGATIONS OF THE PROBLEMS OF SMALL BUSINESS,  
*Washington, D.C.*

The subcommittee met, pursuant to recess, at 10 a.m., in room 1301, Longworth House Office Building, Hon. Wright Patman (chairman of the subcommittee) presiding.

Present: Representatives Patman and Roosevelt.

Also Present: Representative Tom Steed, of the full committee; H. A. Olsher, Director of Foundation Studies; and Eugene Loehl, Assistant Minority Counsel.

The CHAIRMAN. The committee will please come to order.

This is the seventh session of hearings of Subcommittee Number 1 on the subject of the Federal Government's supervision of tax exempt foundations and charitable trusts.

On behalf of the subcommittee, I would like to welcome our witness, Mr. Bertrand M. Harding, Acting Commissioner of the Internal Revenue Service. Please identify the two gentlemen with you, Mr. Harding.

**TESTIMONY OF BERTRAND M. HARDING, ACTING COMMISSIONER, INTERNAL REVENUE SERVICE; ACCOMPANIED BY MITCHELL ROGOVIN, ASSISTANT TO THE COMMISSIONER, AND SHELDON S. COHEN, CHIEF COUNSEL—Resumed**

Mr. HARDING. Mr. Rogovin and Mr. Cohen, the Chief Counsel of the Internal Revenue Service.

The CHAIRMAN. Fine, glad to have you.

Mr. Caplin stated in his testimony of July 22, that the Baird Foundations "are under intense audit examination to see that they are abiding by every period and comma in that agreement," which was signed by the Foundations on November 15-16, 1962, and approved by the Commissioner on January 15, 1963.

I shall ask Mr. Olsher to continue.

Mr. OLSHER. During Mr. Caplin's testimony, I summarized the Baird Foundations—Lansall Company—Lansall Corporation transaction of December 31, 1962, which involved the Winfield Baird Foundation and the David, Josephine and Winfield Baird Foundation allegedly selling their stock of the Lansall Corporation, plus other



assets, to the Lansall Company for the sum of \$5,333,615.83 (cost of the assets to the Foundations). You will recall that the two Foundations received cash in the amount of \$615.83, plus subordinated promissory notes in the amount of \$5,333,000 drawing only 4 percent interest with no interest to be charged until January 1, 1966, and maturing April 1, 1978.

Since we did not have enough time to conclude our questioning on this subject, I shall pick it up here.

To sum it up, after the two Baird Foundations invested \$5,333,000 in the Lansall Corporation, they wound up holding promissory notes, which are subordinated to all other liabilities of the Lansall Company and drawing only 4 percent interest. It makes this investment by the Foundations the most speculative of speculative investments. It would also appear that the Lansall Company of Delaware was set up for the express purpose of acquiring the entire assets of the Lansall Corporation of New York from the Foundations with no initial capital outlay at all except the \$200,000 capitalization of the Company.

Among the conditions incorporated in the Baird Foundations-IRS closing agreements of November 1962 is the provision that each of the Foundations (with the exception of \$200,000 required to be paid certain persons by the deed of trust creating the Winfield Baird Foundation) will, on or before December 31, 1965, have "completely disposed and divested itself of its entire net assets to organizations organized and operated exclusively for purposes described in Sec. 501(c)(3) of the Internal Revenue Code of 1954 provided that such organizations shall have obtained rulings or determinations from the Internal Revenue Service that they are exempt from tax and satisfactorily established that such exemption is still in effect."

Now, let me tell you about what has been going on during the "intense audit examination" which Mr. Caplin says the Baird Foundations have had since November 1962 (the date of the closing agreement). You may be interested in knowing that these Foundations failed to comply with Treasury regulations when they filed their 1962 and 1963 tax returns—and those returns were filed in May 1963 and May 1964, many months after the closing agreement of November 1962. Yet, the Baird Foundations violated Treasury regulations when they failed to report full information respecting sale of assets, contributions paid out, holdings of 10 percent or more stock in corporations, and donors' dealings with the Foundations.

With respect to donors' dealings, Treasury regulations require that detailed statements be attached to foundation tax returns if a donor receives any compensation for personal services from the foundation, or if a donor receives any of the foundation's income or corpus in other transactions.

Baird & Co. is a contributor to the Winfield Baird Foundation and to the David, Josephine & Winfield Baird Foundation. Based on figures submitted to us by Mr. David G. Baird, Baird & Co. received commissions totaling \$73,367.87 in 1962 and commissions of \$57,547.50 in 1963 from selling and purchasing securities for these two foundations—and these transactions were not reported in the tax returns of the foundations.

Moreover, according to data furnished by Mr. David G. Baird, Baird & Co. received commissions totaling \$852,107 from selling and purchasing securities for the Baird Foundations during the years 1954

through February 1961-- and such transactions were not reported on the Foundation's tax returns. Commissions for the earlier years 1951 through 1953 have not as yet been submitted by Mr. Baird.

Yet, Mr. Caplin talks about the "intense audit examination" the Baird Foundations have been getting from the IRS.

Additionally, we have witnessed the Secretary of the Treasury completely changing a part of his testimony after he reviewed the transcript. During Mr. Dillon's testimony on July 21, I queried him as to whether, in his view, the names and addresses of donors and the amounts they contribute to a foundation should be open to public inspection. Mr. Dillon's answer was "Yes." However, when the transcript was returned to us by Mr. Dillon, we found that he had reversed himself completely by saying "I think it quite proper that the names and addresses of the original creators of a foundation should be made public at the time the foundation receives its tax exemption."

This does not look good, Mr. Harding. Personally, I am fed up with the hocus-pocus employed by Treasury and IRS officials. It has long been apparent to me that you people, who are supposed to be protecting the public interest, are engaged in an unusual effort as apologists and advocates for the large foundations.

For some reason, a number of Treasury and IRS officials feel compelled to cover up the propaganda peddling of the elite bureaucrats of the large foundations, their gravy trains, and their inefficiencies. Yet, the activities of the large foundations involve more boondoggling than exists in thousands of small foundations. This is something that needs thorough investigation.

The CHAIRMAN. How do you explain the obvious contradiction that exists between Mr. Caplin's intense audit examination of the Baird Foundations and the continuing violations of law by those Foundations, Mr. Harding?

Mr. HARDING. Mr. Chairman, I think Mr. Caplin's testimony could be put into the proper context. What he was attempting to convey to the Committee was that after the information became available to us, in large part through the report of your subcommittee, the Service did undertake an intense reexamination of the closing agreement which we had concluded with the Baird Foundations. That examination is currently in process.

The CHAIRMAN. You have now had five weeks to consider the Baird Foundations-Lansall Company-Lansall Corporation transaction of December 31, 1962. As you know, the following is among the provisions of the IRS-Baird Foundations closing agreement of November 1962:

Each of the Baird Foundations (with the exception of \$200,000 required to be paid certain persons by the deed of trust creating the Winfield Baird Foundation) will, on or before December 31, 1965, have "completely disposed and divested itself of its entire net assets to organizations organized and operated exclusively for purposes described in Section 501(c)(3) of the Internal Revenue Code of 1954 provided that such organizations shall have obtained rulings or determinations from the Internal Revenue Service that they are exempt from tax and satisfactorily established that such exemption is still in effect.

As stated above, the agreement provides that each Baird Foundation must donate its entire net assets to bona fide tax exempt organizations by December 31, 1965.

Yet, six weeks after the signing of the Baird Foundations-IRS agreement the Foundations disposed of over \$5 million in assets right under the nose of the IRS. And to top it off, the assets were sold to a company (Lansall Company) which can still be controlled by Mr. David G. Baird.

In your view, does the Baird Foundations disposal of assets to the Lansall Company conform to the above condition and the general tenor of the Baird Foundation-IRS closing agreement of November 1962?

Mr. HARDING. Mr. Chairman, I think this is among the many questions that we will have to consider in our reconsideration of that closing agreement with Baird.

(The information submitted by the IRS, under date of October 12, 1964, appears on p. 256. Also, see Exhibit 12, p. 312.)

The CHAIRMAN. Prior to approval of the IRS-Baird Foundations closing agreements, did the IRS have knowledge of the Lansall Company-Baird Foundations disposal agreement of December 31, 1962?

Mr. HARDING. My recollection is that we did not have information on it at that time, Mr. Chairman.

The CHAIRMAN. Are the closing agreements between the IRS and the Baird Foundations final and conclusive except upon a showing of fraud or misrepresentation of a material fact?

Mr. HARDING. I believe, Mr. Chairman, that was one of the residual questions from one of our prior sessions we were supplying for the record.

The CHAIRMAN. We would like to have an answer to that. Are the closing agreements between the IRS and the Baird Foundations final and conclusive except upon a showing of fraud or misrepresentation of a material fact? It occurs to me you would be in position to answer that.

Mr. HARDING. I think, Mr. Chairman, that the answer to that question would be that the closing agreement would not be valid if the terms of that agreement were not compiled with by the Foundation.

The CHAIRMAN. Has the statute of limitations expired on tax assessment and collection on the IRS-Baird Foundations agreement?

Mr. HARDING. The agreements holds those years open, Mr. Chairman.

The CHAIRMAN. I did not hear that.

Mr. HARDING. The closing agreement holds the years open.

The CHAIRMAN. Holds the years open?

Mr. HARDING. By agreements with the taxpayer, yes.

The CHAIRMAN. And they will not expire.

Mr. HARDING. That is correct, sir.

The CHAIRMAN. All the years, all the years beginning 1951?

Mr. HARDING. All the years covered in the agreement.

The CHAIRMAN. From 1951 on?

Mr. HARDING. That is not my recollection, Mr. Chairman.

The CHAIRMAN. What years did it cover?

Mr. HARDING. I think we will have to supply that for the record to be precise, Mr. Chairman. As I recall it is '53 or '54 was the beginning year covered by the agreement.

The CHAIRMAN. And all the years since that time the statute of limitations is waived.

Mr. HARDING. This is according to my recollection of the circumstances.

(Following is the information submitted by the IRS, under date of October 12, 1964. Also, see Exhibit 12, p. 312.)

The Closing Agreements of November, 1962, approved by the Commissioner January 15, 1963, covered the years 1951 through 1959 for the three foundations: Winfield Baird; David, Josephine and Winfield Baird; and Lansing.

The CHAIRMAN. Regarding the Baird Foundations, has the IRS asked for waivers to December 31, 1967?

Mr. HARDING. The years are open, Mr. Chairman.

The CHAIRMAN. They are open so it would not be necessary to have a waiver.

Mr. HARDING. It would not be necessary to ask waivers.

The CHAIRMAN. The agreement, you state, includes a statement to the effect that the statute of limitations will not run and, therefore, you say it is unnecessary to have a waiver to December 31, 1967.

Mr. HARDING. Well, of course, there is no problem about the last 3 years, and you are talking now about return years that are 2 years ahead of us.

The CHAIRMAN. Earlier than that, yes, sir.

Mr. HARDING. Yes, sir. So we will keep all years open—either under the agreement or by waiver.

The CHAIRMAN. Is donation of subordinated notes considered charitable giving by the IRS?

Mr. HARDING. It could be, Mr. Chairman.

The CHAIRMAN. In view of the fact that the Baird Foundations invested \$5,333,000 in the Lansall Corporation and, after holding the stock for 10 years, sold it to allied persons at no profit, would you place this in the realm of prudent investments?

Mr. HARDING. I think this is a matter for us to look into, Mr. Chairman.

(The information submitted by the IRS, under date of October 12, 1964, appears on p. 256. Also, see Exhibit 12, p. 312.)

The CHAIRMAN. Based on these facts, would you agree that Mr. David G. Baird retains control and use of the assets transferred to both the Lansall Corporation and the Lansall Company through the 50 percent interest in Lansall Company stock which is in the name of Mr. Joseph Patrick, a general partner of Baird and Company, and the two and a half percent of the Lansall Company stock still retained by the Winfield Baird Foundation?

Mr. HARDING. The answer to that question, Mr. Chairman, might relate to the propriety of the tax exemption of the Baird Foundation, and I would respectfully avoid answering at this time in view of the pending investigation.

(The information submitted by the IRS, under date of October 12, 1964, appears on p. 256. Also, see Exhibit 12, p. 312.)

The CHAIRMAN. It seems to me that here we have a situation where the Baird Foundations have failed to fulfill the obligations of tax exempt organizations over a period of many years. So, as a reward for such antics, the IRS permits them to donate \$5,333,000 subordinated promissory notes as a method of fulfilling responsibilities. Do you approve of this?

Mr. HARDING. We did not permit this transaction, Mr. Chairman, and we are, as I indicated, going to consider it in connection with the Baird case.

(Following is the information submitted by the IRS, under date of October 12, 1964. Also, see Exhibit 12, p. 312.)

In light of the procedural rules for dealing with issues raised in the audit of returns, including rights of appeal available to taxpayers in such cases, I am sure you will agree that it would be inappropriate for me, as Acting Commissioner, to prejudge the tax consequences of the various transactions you cite by responding to your questions at this time. Once the Service audit has been concluded and final decisions reached, I shall be glad to respond to the extent the disclosure statutes and good administrative practices permit.

The CHAIRMAN. Mr. Harding, you are hereby requested to furnish this Subcommittee, by October 12, 1964, a written statement informing us whether the Baird Foundations have thus far complied with (1) the November, 1962 closing agreement, and, (2) Federal law and Treasury regulations beginning 1960.

If the Baird Foundations have not complied with the November, 1962 agreement, or if they have not complied with Federal law or Treasury regulations beginning 1960, you are requested to submit full details of such violations. Will you undertake to furnish that to us, sir?

Mr. HARDING. Mr. Chairman, I would hope that we could give you that information by that date. However, we do have the investigation underway, and I think we ought to conclude it before we supply the information.

The CHAIRMAN. Do you contemplate finishing the Baird Foundations matter before October 12?

Mr. HARDING. Mr. Chairman, I would doubt seriously if that matter could be concluded by October 12.

The CHAIRMAN. How much time do you anticipate will be required?

Mr. HARDING. I have not gotten a recent estimate from the people in New York on it. I would be happy to get that and see if I could supply it for the record. Would that be satisfactory sir?

The CHAIRMAN. Yes, that will suffice.

(Following is the information submitted by the IRS, under date of October 12, 1964. Also, see Exhibit 12, p. 312.)

The Service audit of returns of these three foundations for the years 1960 through 1963 commenced December 26, 1963. All of their returns for the years 1951 through 1959 are also open for assessment of tax, under consents filed. The scope of the audit includes the consideration of all those matters on which you have reported or raised questions.

The Service is, however, unable to fix a date for the completion of this audit. Aside from the large volume of complex transactions to be considered, the audit has been delayed by the unavailability of records maintained by the three foundations. We are advised that these records were with your Subcommittee until approximately April 29, 1964, and that they were then subpoenaed by the Securities and Exchange Commission where they have been since on or about July 1, 1964. (Item No. 7, Attachment A, to your letter.)

The Life Line Foundation's tax returns——

Mr. STEED. Before you go to that, could I ask a question?

The CHAIRMAN. Yes, sir.

Mr. STEED. Mr. Harding, since rather startling statements have been made by the Chairman in connection with the Baird Foundations and since you say that it is currently being investigated by your Agency, what would be the situation if you found these to be true, and you issued an order canceling the Foundations' privileges, what recourse in a situation of that sort would the Baird Foundations have against you?

Mr. HARDING. Well, they have a recourse, of course, administrative recourse, Mr. Steed. We always grant people in these circumstances a hearing on the proposed revocation. In addition to that there are ways in which the Foundation can get its case into the courts, and test our determination.

Mr. STEED. Since rather substantial sums of money are involved it would probably be safe to assume if you did revoke that attempts would be made by the Foundation to reduce the controversy to litigation, if it could. Has this sort of thing happened in prior years in cases of this sort?

Mr. HARDING. Yes, sir. We have had a number of foundation cases in court.

Mr. STEED. And what is the general historic outcome of that type of situation?

Mr. HARDING. My legal counsel informs me that we have been exceedingly unsuccessful in most of our activities in the courts on foundations and their activities. This is one of the matters which was covered at some length in some of the earlier hearings. We pointed out that there were very great difficulties in the law and the current status. The Secretary testified that the matter was under study by the Treasury with a view towards making recommendations to the next session of Congress on this particular section of the law.

Mr. STEED. Obviously, this foundation problem in its entirety cries out for some sort of redress and legislative action might be part of the answer, and strengthened work on the part of the IRS may be part of the answer. I certainly hope that we have not drifted along until we have gotten to a situation where the tail is wagging the dog. That the power and influence of these foundations enjoying these privileges will not be such that these reforms will be defeated.

It seems to me that the purpose for foundations is a very worthwhile one, and there are so many of these foundations of all sizes doing such, so many worthwhile things that the least anyone could want to do would be to clean up the situation so that legitimate foundations would no longer be under the cloud that this sort of thing seems to place on the whole program.

Mr. HARDING. I think we can identify completely with your statement, Mr. Steed. I would like to point out that as Commissioner Caplin testified, there has been a great intensification of our audit of these foundations over the last three and a half.

The CHAIRMAN. The Life Line Foundation's tax returns show receipts from newspaper sales as follows: \$52,690.62 (fiscal year ending September 30, 1960), \$71,447.75 (fiscal year ending September 30,

1961), \$118,071.78 (fiscal year ending September 30, 1962), and \$109,020.62 (fiscal year ending September 30, 1963). According to information we obtained from the Foundation, the following are among its newspaper sales during fiscal years ending September 30, 1960, through September 30, 1963. We assume that the "newspaper sales" refer to sales of the Life Line newspaper called "Life Lines" which is published three times weekly.

I shall insert such newspaper sales for the record.  
 (The insert is as follows:)

Date	Buyer	Amount	Date	Buyer	Amount
Nov. 16, 1959	Hunt Oil Co.....	\$409.00	Apr. 30, 1962	HLH Products—Con.	\$315.00
Dec. 21, 1959	do.....	108.50	May 3, 1962	do.....	998.50
Dec. 23, 1959	do.....	848.00	May 4, 1962	do.....	987.00
Jan. 18, 1960	do.....	1,310.00	May 24, 1962	do.....	78.50
Jan. 25, 1960	do.....	1,664.00	June 1, 1962	do.....	612.00
Feb. 1, 1960	do.....	30.00	June 11, 1962	do.....	447.93
Feb. 6, 1960	do.....	942.00	June 14, 1962	do.....	137.50
Mar. 7, 1960	do.....	195.00	June 19, 1962	do.....	609.00
Mar. 8, 1960	do.....	6.00	July 9, 1963	do.....	919.00
Mar. 24, 1960	do.....	5,500.00	Aug. 13, 1962	do.....	1,087.25
Apr. 16, 1960	do.....	184.00	Sept. 13, 1962	do.....	615.00
Apr. 29, 1960	do.....	10,000.00	Nov. 2, 1962	do.....	2.00
Apr. 30, 1960	do.....	139.00	Nov. 15, 1962	do.....	.50
May 12, 1960	do.....	71.00	Nov. 26, 1962	do.....	8,170.00
Nov. 17, 1960	do.....	3,787.00	Dec. 3, 1962	do.....	391.00
Feb. 20, 1961	do.....	5.00	Dec. 14, 1962	do.....	807.00
Feb. 20, 1961	do.....	17.00	Jan. 24, 1963	do.....	632.00
Mar. 8, 1961	do.....	692.76	Feb. 14, 1963	do.....	347.50
May 2, 1961	do.....	6,717.00	Feb. 25, 1963	do.....	620.00
May 24, 1961	do.....	31.00	Apr. 8, 1963	do.....	327.25
Sept. 5, 1961	do.....	1,496.00	Apr. 16, 1963	do.....	88.00
Sept. 5, 1961	do.....	156.00	May 10, 1963	do.....	179.25
Feb. 16, 1962	do.....	3,070.00	June 13, 1963	do.....	18.50
Mar. 2, 1962	do.....	938.00	July 12, 1963	do.....	183.00
Mar. 12, 1962	do.....	539.85	Aug. 12, 1963	do.....	531.50
June 1, 1962	do.....	492.00	Sept. 23, 1963	do.....	530.50
June 25, 1962	do.....	504.00		Total.....	36,651.08
Aug. 13, 1962	do.....	495.00			
Sept. 8, 1962	do.....	495.00	Feb. 15, 1961	H. L. Hunt.....	850.00
Nov. 26, 1962	do.....	990.00	Feb. 19, 1962		
Jan. 24, 1963	do.....	483.00	HLH Parade.....	2,335.00	
Feb. 14, 1963	do.....	480.00	Feb. 26, 1962	do.....	1,683.00
	Total.....	42,793.11	Mar. 2, 1962	do.....	154.50
				Total.....	4,172.50
Mar. 12, 1960	HLH Products.....	39.00	Mar. 12, 1962		
June 27, 1960	do.....	6,500.00	Nov. 14, 1962	Hassie Hunt Trust.....	133.00
Mar. 14, 1961	do.....	3,033.00	Dec. 14, 1962	do.....	5,718.80
May 4, 1961	do.....	536.00	Jan. 25, 1963	do.....	658.85
May 24, 1961	do.....	64.00	Feb. 14, 1963	do.....	658.85
May 24, 1961	do.....	953.00	Feb. 26, 1963	do.....	8.85
May 24, 1961	do.....	14.00	Apr. 8, 1963	do.....	658.85
July 13, 1961	do.....	1,088.00	Aug. 12, 1963	do.....	74.31
Oct. 16, 1961	do.....	340.00	Sept. 16, 1963	do.....	380.00
Oct. 16, 1961	do.....	100.00		do.....	748.00
Oct. 5, 1961	do.....	2,444.00		Total.....	9,039.51
Mar. 12, 1962	do.....	1,403.00			
Mar. 23, 1962	do.....	452.40			

Additionally, we find that substantial amounts of books sales were made to numerous business firms. Following is a sampling of a few such purchases:

Date	Purchaser of books	Amount	Date	Purchaser of books	Amount
Feb. 9, 1959	Baroil Well Logging Service.	\$1,000.00	Dec. 19, 1958	Hunt Oil Co.—Con.	\$270.00
July 15, 1959	Black, Sivalis, & Bryson, Inc.	1,226.40	July 3, 1959	do.	307.60
Jan. 28, 1959	Browster Co.	500.00	Jan. 28, 1959	Jett Drilling Co.	500.00
Jan. 15, 1959	Continental-Emsco.	5,000.00	Feb. 12, 1959	Magnet Core Barium Corp.	1,000.00
Dec. 23, 1958	First National Bank of Dallas.	5,190.00	Nov. 17, 1958	T. E. Mercer Trucking Co.	1,000.00
Jan. 6, 1959	First National Bank of Shreveport.	500.00	Jan. 15, 1959	National Supply Co.	2,000.00
Feb. 2, 1959	Halliburton Oil Well Cementing Co.	250.00	Jan. 20, 1959	Oil Well Supply Co.	500.00
July 27, 1959	Hotel Adolphus.	600.00	Oct. 10, 1958	Penrod Drilling Co.	1,500.00
Dec. 4, 1958	Hunt Oil Co.	4,060.00	Dec. 5, 1958	Placid Oil Co.	1,480.00
Dec. 8, 1958	do.	5,400.00	Dec. 31, 1958	do.	3,320.00
Dec. 10, 1958	do.	400.00	Dec. 31, 1958	Quorbes & Bourquin.	500.00
Dec. 12, 1958	do.	3,920.00	Feb. 6, 1959	Reed Roller Bit Co.	500.00
Dec. 15, 1958	do.	200.00	Dec. 31, 1958	Stewart Office Supply Co.	150.00
			Jan. 5, 1959	Tri-State Oil Tool Co.	600.00
			Jan. 28, 1959	United Engines, Inc.	500.00

So here we have substantial sums of money being spent by business firms for purchases of the newspaper "Life Lines" and for purchases of Life Line Foundation's books. For example, based on the aforementioned purchases only, we know that the Hunt Oil Company spent at least \$42,793.11 for the purchase of the newspaper "Life Lines" and \$14,557.60 for purchases of the Life Line Foundation's books; HLH Products spent \$36,651.08 for purchases of the newspaper "Life Lines"; HLH Parade spent \$4,172.50 for purchases of the newspaper "Life Lines"; Continental-Emsco spent \$5,000 for purchases of the Life Line Foundation's books; The First National Bank of Dallas spent \$5,190 for purchases of the Life Line Foundation's books; National Supply Company spent \$2,000 for purchases of the Life Line Foundation's books; and Placid Oil Co. spent \$4,800 for purchases of the Life Line Foundation's books.

Would the IRS permit the purchaser to deduct as business expenses such purchases of the newspaper "Life Lines" and Life Line Foundation's books?

Mr. HARDING. Could I ask Mr. Rogovin to respond to that question, Mr. Chairman?

The CHAIRMAN. Yes, sir.

Mr. ROGOVIN. Mr. Chairman, the question of the deductibility of such expenses by the corporation is governed by Section 162 of the Revenue Code. With respect to advertising, and more particularly



the type of ideological advertising that this may represent, deductions for the costs of advertising are generally governed by regulation section 1.162-15(c)(1). That section, after denying deductions for expenditures for lobbying, for the promotion or defeat of legislation, and for political campaign purposes (including advertising) related to any of the foregoing, provides: "On the other hand, expenditures for institutional or 'good will' advertising which keeps the taxpayer's name before the public are generally deductible as ordinary and necessary business expenses, provided the expenditures are related to the patronage the taxpayer might reasonably expect in the future \* \* \*. In like fashion, expenditures for advertising which present views on economic, financial, social or other subjects of a general nature but which do not involve any of the activities specified in the first sentence of this subparagraph [referring then to lobbying, promotion, or defeat of legislation, or political campaigns:] are deductible if they otherwise meet the requirements of the regulations under section 162."

Thus, if the purchase of advertising or the purchase of the newspapers or books referred to was used in an advertising sense we would have to apply the test of our regulations. If, on the other hand, these materials were merely distributed to the employee of the corporate purchaser, we would then have to see if this served any ordinary and necessary business purpose.

There was a case some years back where the corporate purchasing of magazines for distribution to employees was considered not to be a business purpose and the deduction denied. This is highly factual question, Mr. Chairman, and would have to be resolved with respect to the facts relating to each one of these purchasers, and the use they put the material.

The CHAIRMAN. Since this has gone on over a long period of time, it occurs to me that you must have been called upon to make a decision on some of these contributions for purchases of subscriptions. You mean to say you have not been called upon to decide a single one of these Hunt cases?

Mr. ROGOVIN. I am not aware of a Hunt case. I am aware of situations, however, where we have disallowed purchases of magazines of an ideological nature for distribution.

The CHAIRMAN. Would you check this out and when you look over your transcript of testimony, state whether or not you have allowed any of these to be deducted or if any of them have been refused.

Mr. HARDING. You are referring to an examination of the purchaser here, rather than examination of the foundation.

The CHAIRMAN. That is right, yes, sir.

Mr. HARDING. Yes, sir; we would be happy to do that.

(Following is the information submitted by the IRS, under date of October 2, 1964.)

Our field offices have disallowed portions of deductions claimed on the basis of failure of certain of these companies prove such purchases constitute ordinary and necessary business expenses.

The CHAIRMAN. With respect to the tax returns filed by the Life Line Foundation for fiscal years ending September 30, 1951 through fiscal year ending September 30, 1963, what years are still open for assessment?

Mr. HARDING. '61 through '63? I think they will all be open, Mr. Chairman.

The CHAIRMAN. From September 30, 1951 through September 30, 1963.

Mr. HARDING. Yes, sir, we will supply for the record the years that are open, either under the statute or by agreement with the taxpayer from 1951—

The CHAIRMAN. From September 30, 1951.

Mr. HARDING. Well of course they are open since 1961.

(Following is the information submitted by the IRS, under date of October 2, 1964.)

Returns filed for the fiscal years ending in 1961, 1962, and 1963, are open for assessment.

The CHAIRMAN. On September 1, 1964, I asked you to submit for the record a copy of the IRS letter or memorandum to the FCC relating to "non-commercial stations and political broadcasts." Do you now have that copy to submit, Mr. Harding?

Mr. HARDING. No, sir. We do not have it yet.

The CHAIRMAN. Well, when are you going to furnish that copy?

Mr. HARDING. We understood we would furnish it with the transcript coming back, Mr. Chairman.

The CHAIRMAN. With the transcript coming back.

Mr. HARDING. Yes, sir.

The CHAIRMAN. And you will have it in the record at that time.

Mr. HARDING. Yes, sir, we will have it in the record.

The CHAIRMAN. And you will submit it.

(Following is the information submitted by the IRS, under date of September 22, 1964.)

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
Washington, D.C., June 14, 1962.

Reference 8900.

HON. NEWTON N. MINOW,  
Chairman, Federal Communications Commission,  
Washington, D.C.

DEAR MR. MINOW: In your letter of April 23, 1962, you asked for an opinion on the applicability of certain provisions of the Income Tax Regulations to activities of noncommercial broadcasting stations. You state that you have been conducting a public inquiry into the local programming of Chicago television stations, and that the noncommercial educational television station WTTW has informed you it has a policy of not carrying any political broadcasts. This policy is stated to have been adopted not only because the Board of Trustees considered that an educational station should not become involved in urging any form of particular political action, but also because the Trustees found it necessary to follow this policy under Treasury regulations providing tax exemption for "corporations organized and operated exclusively for educational purposes no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

You have explained that the Federal Communications Commission has taken the position that the carrying of political broadcasts is one of the major elements usually necessary to meet the public interest, needs, and desires of the community in which a station is located. You point out that in the case of *Farmers Educational & Cooperative Union of America, North Dakota Division, v. WDAY, Inc.*, 360 U.S. 525, the Supreme Court has recognized that the carrying of political broadcasts is a public service criterion to be considered both in license renewal proceedings, and in comparative contests for a radio or television construction

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permit. You also advised us that Section 315 of the Communications Act requires a broadcasting station which makes its facilities available to legally qualified candidates for political office to afford equal opportunities to all such candidates for that office. Similarly, when a station carries programs dealing with controversial issues of public importance, it has an obligation to be fair and to afford reasonable opportunity for the presentation of conflicting views.

First, let me explain that the quoted portion in your letter relative to educational organizations is a part of the statutory language of section 501(c)(3) of the Internal Revenue Code. The Income Tax Regulations (26 CFR 1.501) applicable to section 501(c)(3) were published as Treasury Decision 6391 in Cumulative Bulletin 1959-2, beginning at page 139. As defined in the regulations, the term "educational" relates to: (a) the instruction or training of the individual for the purpose of improving his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community. The regulations further state that an organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

The explicit statutory limitation on legislative activity by charitable, educational and other organizations described in section 501(c)(3), was first included in the Revenue Act of 1934. However, the 1954 Code added the further restriction: "\* \* \* and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office." To qualify for exemption under the provisions of section 501(c)(3) of the Code, an organization must establish that it is exclusively organized and operated for one or more of the purposes specified in that section of the law. Under the statute and the regulations, political activities may result in the failure to qualify for, or loss of, tax exemption. This may occur in three ways: First, political purposes may appear in the articles of organization, thus disqualifying it as not being "organized exclusively" for the requisite charitable, educational, or other exempt purpose. Secondly, an organization which actually engages in political activities (other than participation or intervention in political campaigns in behalf of candidates for office), may not be exempt because "substantially" all of its activities are not for an exempt purpose or purposes (the regulations provide that an organization will not be regarded as "operated exclusively" for one or more exempt purposes if "\* \* \* more than an insubstantial part of its activities is not in furtherance of an exempt purpose") and thirdly, an organization may not be exempt because it participates or intervenes, directly or indirectly, in a political campaign on behalf of a candidate for public office.

As I stated above, section 501(c)(3) of the 1954 Code now expressly precludes tax exemption in cases where an organization participates or intervenes in political campaigns, without reference to the concept of substantiality. Section 1.501(c)(3)-1(c)(3) of the regulations in referring to these proscribed activities provides that:

"An organization is an 'action' organization [and precluded from exemption] if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term 'candidate for public office' means an individual who offers himself, or is proposed by, others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate."

To summarize, insubstantial legislative or political activities, other than participation in or intervention in political campaigns on behalf of candidates for public office, will not disqualify an educational organization such as an educational broadcasting station, from tax exemption, provided it otherwise meets the exemption requirements of section 501(c)(3) of the Code. Further, the application of section 501(c)(3) and the Income Tax Regulations thereunder does not preclude a tax-exempt educational television station from presenting broadcasts on political matters or political campaigns, if the broadcasts are nonpartisan, the station is able to show that these programs were undertaken entirely in the

public interest, and the station itself is not participating or intervening in a political campaign on behalf of a candidate for public office. The mere fact that such station affords equal opportunities to opposing views would not of itself be sufficient to establish as a fact that the station is not so intervening or participating, but would, of course, be pertinent to any such consideration. Thus, the station would have to be prepared to establish factually that it does not urge, advocate, or otherwise endorse the views presented.

Whether, and the extent to which, a particular program or activity falls within the statutory proscriptions against legislative and political activities is essentially one of fact to be determined on a case-by-case basis in the light of the facts and circumstances presented. You will appreciate, I am sure, the complexities and difficulties inherent in determining whether political activities of this type are conducted in a nonpartisan manner. Similarly, where opposing candidates for public office are being presented by the station for the education of their viewers, the fact that equal time is granted to all legally qualified candidates for a particular political office will not in itself usually be sufficient to overcome these difficulties.

I have followed with a great deal of interest, the newspaper reports of the new legislation which now makes possible Federal subsidies for educational broadcasting. If you believe that Internal Revenue personnel can be of assistance to you by meeting with members of your staff to discuss provisions of the Internal Revenue Code which may affect educational broadcasting in the public interest, please feel free to call upon us.

Sincerely yours,

(Signed) HAROLD T. SWARTZ,  
*Assistant Commissioner.*

Mr. STEED. Mr. Harding, I think I know a little bit about the oil industry and some of the people who participate in it. Are you in position to tell me how a drilling contractor could expect to enhance his business opportunities by buying and circulating a lot of political blurb like this?

Mr. HARDING. Well, sir, as Mr. Rogovin tried to say, this is a factual question which we have to look at in connection with the activity of that particular taxpayer. Now, off the top of my hat I would see two possibilities. One would be a distribution among employees, depending upon the size of his organization, and the other would be distribution to customers of what we call "institutional advertising."

Now this is without making any judgments on the nature of the material which is being distributed.

Mr. STEED. Many drilling contractors, the only business they get is by competitive bidding with some company wanting a well drilled. How could the giving somebody a bunch of books help a man get some business on a competitive bid?

Mr. HARDING. Mr. Steed, I have trouble answering your question, sir. I do not know the answer.

Mr. STEED. Looking over this list, I am willing to concede that there may be some firms here that might build some good will by distributing things of this sort. But then there are some others here, I just cannot for the life of me see how they would expect to improve their business opportunities with this sort of an operation, and if they did get a tax deduction on this as a business expense, it would seem to me that the IRS is being a little more lenient with this kind of taxpayer than with some others I know about.

Mr. HARDING. Well, let me also point out, Mr. Steed, that we have a very limited audit of income tax returns in terms of total number filed. Of those that we do examine, particularly corporations, we have to look at the major elements in their financial activities. Now

whereas these items look large to you and to me, they may very well be buried in a much larger advertising account. For example, without a complete examination of that account by the agent, it might not even come to his notice that there had been \$1,000 or more involved in the purchase of books from Life Line. So some of this undoubtedly oversight on our part. Some of it may be our inability to determine the proper deductibility of the borderline item in an examination of the books.

Mr. STEED. I would assume that some of these companies listed here, especially the Hunt Oil Company, and associated agencies, would have come to the attention of the IRS in some of these years in a rather detailed way.

Mr. HARDING. This is a question of what you mean by detail, Mr. Steed. I am confident that many of these companies have been examined over recent years.

Mr. STEED. I can assure you there are some oilmen in my State and district who have come under very detailed scrutiny of the IRS, and if the same careful attention is applied to some of these firms here that have been to some taxpayers I know, I am sure all these details would have been very clearly brought out.

I do not know how you could have a \$10,000 book purchase item of an oil company in one transaction and not have to show some indication of it in an income tax return.

Mr. HARDING. Well, sir, I agree with you when you look at these particular items. For example, in some of our earlier hearings we discussed a list of travel items from one of the foundation's travel accounts. In a large corporation examination whereas we do typically examine a travel account, we cannot with great precision validate each and every trip that is taken.

Similarly in many cases their advertising account, although looking big when totaled in this fashion, is, perhaps, not so big in terms of the total activity of the corporation.

Mr. STEED. Is there any element—the fact that Life Line Publications are themselves produced by a tax-exempt foundation, does that tax-exempt source of this material have any bearing on whether the purchaser of that material gets tax exemption on it or just call it a business exemption?

Mr. HARDING. If this is a purchase, no, sir; there would be no distinction between a foundation and a private publisher.

Mr. STEED. Could it be possible for someone to make a donation to the foundation and receive this material in return, and for the transaction to be filed in that way?

Mr. HARDING. It could be improperly reported on their books, yes, sir, as a purchase rather than a donation.

The CHAIRMAN. Talking about donations to foundations, don't you know of instances where individuals have made contributions or donations to foundations for the purpose of getting special benefits of different kinds? I shall be more specific by giving this illustration. Don't you know of instances where a person controlling a foundation has made contributions to a college for the purpose of getting a scholarship for his son or a relative? Do you know of instances like that?

Mr. HARDING. I think we previously discussed a somewhat similar instance, Mr. Chairman, where the foundation paid the tuition of the son of the creator.

The CHAIRMAN. That is right. We did. But don't you know of instances where it has been sort of a turnkey job?

Mr. HARDING. I understand that there have been such circumstances, yes, Mr. Chairman.

The CHAIRMAN. Mr. Steed.

Mr. STEED. Mr. Harding, would there be any way for your department to find out, for instance, if the Reed Roller Bit Company made sizable purchases of these items listed here, whether that would give them any advantage in selling their drilling bits to some of these oil companies that seem to be so intensely interested in this particular operation?

Mr. HARDING. It sounds like a little sophisticated item for a revenue agent to inquire over, Mr. Steed. I think our interest would be limited to whether or not this was a bona fide business expense on the part of the corporation. I grant you this inference, that there might have been an ulterior motive behind the transaction. But I think our authority would stop at the point that we determine that here either was or was not a bona fide business expense connected with it.

Mr. STEED. If you found out or could prove that the controllers of the foundation and the publishers of these documents did a lot of business with some of these heavier contributors here, would that cause you to be suspicious?

Mr. HARDING. Yes, sir; it might.

The CHAIRMAN. Mr. Roosevelt.

Mr. ROOSEVELT. Could I just ask, it intrigues me to know: In the case of, for instance, a donation from, let us say, the Hunt Oil Co., of \$42,793.11, presumably for the purchase of newspapers, Life Lines—is this in the form of control of the newspaper or in the form of individual subscriptions, and, if so, what does Internal Revenue do to find out what the oil company does with it?

Mr. HARDING. We discussed at some length, Mr. Roosevelt, the fact that this is a factual question in the examination of the oil company to determine whether or not the purchase of these publications and their use by the corporation constituted a bona fide business purpose, either of institutional advertising or some internal employee distribution or something of this sort. This is our—

Mr. ROOSEVELT. How could it be institutional advertising?

Mr. HARDING. I guess, Mr. Roosevelt, somewhat like passing out matchboxes.

Mr. ROOSEVELT. Yes, but I am advertising myself if I hand out matchboxes.

Mr. HARDING. Compliments of the purchaser, Mr. Roosevelt.

Mr. ROOSEVELT. Just compliments of the oil company?

Mr. HARDING. Yes, sir.

Mr. ROOSEVELT. And you would allow that as—

Mr. HARDING. I am not saying we would allow that, Mr. Roosevelt. All I am saying is we were speculating on what might have been the purported business purpose of these purchases.

Mr. ROOSEVELT. What I am trying to get at is what is the standard which Internal Revenue will set for this kind of business expense? Presumably you might say to me, "Well, this is a matter that the field man wasn't competent to pass on."

But certainly somebody has to pass on it, and he must pass on it upon the basis of some kind of criteria.

What would be the criteria that would be used?

Mr. HARDING. Maybe, perhaps, Mr. Rogovin could briefly summarize his comments along this line just before you came in.

Mr. ROGOVIN. Mr. Roosevelt, one of the problems is that we have to make a judgment, in terms of the statute, whether expenditures are ordinary and necessary business expenses in relation to the particular corporation and the use it puts such material.

In a related area—we contested the deductibility of expenditures for advertisements in a political convention journal, some years back, in 1957. We raised the question as to why a coal company would advertise in a national political convention journal. The matter went to the Tax Court. The Court was very reluctant to question the business judgment of the corporation and indicated that it was a deductible form of advertising, even though it recognized the money went to the political party and was used to defray political expenses. The Court maintained the position that it wasn't going to second-guess a business judgment. If a man is getting a dollar's worth of advertising for the dollar he spends, that was sufficient for the Court. This setback was accepted by the Revenue Service in 1958, and what we attempt to do in these cases is to look with objective standards at the particular facts of the case. I think that the case we are speculating on now, is perhaps one that might well cause a disallowance. Where a magazine or newspaper is being handed out to prospective purchasers or employees of the corporation, where it serves no business purpose, and where it is material of a highly inflammatory nature, with the only institutional advertising aspect a little box at the bottom "with the compliments of the corporation," this may well lead to a disallowance of that particular item, the deduction of that item.

Mr. ROOSEVELT. Do you tell us that you will test this?

Mr. ROGOVIN. Well, one of the difficulties is when the agent goes in and looks at the books and records of the corporation, a \$1,500, \$10,000 item among literally millions of dollars, just doesn't stand out.

A lot of these things are buried, and when we find them we raise them. But finding them is very difficult.

We had an experience where we found purchases of the John Birch Society magazine, *American Opinion*, by an oil company, and the purchase was hidden in crude oil purchases.

Mr. ROOSEVELT. That would make you somewhat suspicious, wouldn't it?

Mr. ROGOVIN. We tended to be \* \* \* I agree.

Mr. HARDING. And also difficult to locate.

Mr. ROGOVIN. This was a test, in which we traced it back from the seller. We knew they had subscribed and knew they had made the purchase, and wanted to find out where it showed up. It didn't show up in any institutional advertising account, but in a crude oil account.

Mr. ROOSEVELT. Here it is quite open, there is no attempt to hide it. It is quite open. This is a purchase.

Mr. HARDING. These records, Mr. Roosevelt, come from the foundation's side, not the corporations' sides. We do not know how this is reflected in the corporate records.

Mr. ROOSEVELT. You are going to look into it?

Mr. HARDING. Yes, sir; we will look into these matters of exemption of these purchases.

Mr. ROOSEVELT. I think that answers my question. Thank you, Mr. Chairman.

The CHAIRMAN. I would like to ask you about the Kaplan Fund, Mr. Harding.

During our hearing of August 10, I asked you the following question: Does the fact that Mr. Moe overrode the prior recommendations of the District Director in 1960 mean that the National Office of the IRS cannot do anything about any tax liability that may exist for the J. M. Kaplan Fund for the years 1952 through 1956? In other words, does the statute of limitations kill any possibility for assessing taxes for these years?

You stated that you did not know the answer to that question but that you would submit it for the record on August 31. On the latter date you advised us that the answer would be forthcoming very soon.

By letter of September 1, 1964 you submitted the following answer to that question:

With regard to the J. M. Kaplan Fund, Inc. of New York, N.Y., the statute of limitations has expired on returns filed by the Fund for the years 1954, 1955, 1956 and 1957 pursuant to the provisions of section 6501(g) (2) of the Internal Revenue Code of 1954. There was, however, no provision corresponding to section 6501(g) (2) in the prior Code and it has been held that the filing of an information return for years prior to 1954 by an organization believing itself to be exempt did not start the running of the statute of limitations. Thus, returns filed by the Kaplan Fund for the years 1952 and 1953 would still be open for assessment.

Returns for the years 1958, 1959, and 1960 are those presently under audit, and they are open for assessment to June 30, 1965 under consents extending the statute of limitations filed by the Fund. Returns for the years 1961, 1962 and 1963 are, of course, open under the normal three year period of limitations to May 15, 1965, 1966 and 1967, respectively.

So you are now telling us that the statute of limitations has expired on the tax returns filed by the Fund for the years 1954 through 1957? How do you explain the fact that the statute of limitations was allowed to expire for these years? These were part of the years that were under so-called "intensive investigation" by the IRS and for which Messrs. Donald R. Moysey and Raphael Meisels, former District Directors of Lower Manhattan, recommended revocation of the Fund's tax exemption.

How do you answer that, Mr. Harding?

Mr. HARDING. Mr. Chairman, the latter year, 1957, expired, of course, in 1961. The reexamination, the intensive reexamination, of this Fund, as we have testified, was subsequent to that date.

There was no reason, known to us in 1960, that those years should have been held open.

The CHAIRMAN. The recommendation for revocation of the tax exemption by the District Director in 1957, did it state that it had been under an intense investigation for a number of years or over a long period of time?



Mr. HARDING. Yes, sir. These years were, of course, open at that time. But in 1960 the case was resolved, and the exemption was extended. There was, therefore, no apparent reason at that time for keeping open those years through 1957.

The CHAIRMAN. That does not seem just a complete answer to me, Mr. Harding. I cannot understand why they let that expire. You knew it was going to expire. Why didn't you do something about it?

Mr. HARDING. Well, sir, in 1960 the case presumably was resolved. This would have been the year to have sought an extension for the year 1957. 1954, 1955, 1956 would have run.

The CHAIRMAN. I want to ask one other question. Are you saying that the failure of the IRS to obtain an extension of the statute of limitations was just an oversight on the part of the Revenue Service?

Mr. HARDING. No, sir; I am not saying that.

I am saying that in retrospect, in view of the material which has been brought to our attention, it might have been desirable at that time to have held those years open. But in terms of the status of the case in 1960, I cannot question the judgment of the District Director in allowing those years to expire after he had resolved the case, after consultation with the national office.

Mr. STEED. As I understand it then, the third director involved in Lower Manhattan, after consultation with the national office, reached a determination that Kaplan was in compliance and, therefore, were not going to revoke their tax exemption status.

Mr. HARDING. Yes, sir; that is part of the record.

Mr. STEED. And due to that decision that covered these years.

Mr. HARDING. — they were allowed to run.

Mr. STEED. And the statute ran.

Mr. ROOSEVELT. I think we ought to go back on the record a little bit, because the impression of some of us was, perhaps, erroneous, but I think we ought to check the record. I think, you previously testified or our impression is that you previously testified, that all of these years were presently under intensive investigation.

Mr. HARDING. If I so testified, Mr. Roosevelt—

Mr. ROOSEVELT. If so the record ought to be corrected.

Mr. HARDING (continuing). I would certainly correct the record. It was not my intention to so testify because, as I did testify, I did not know at that time which years were open, and we made this determination and supplied this letter for the record.

I do not believe that in the context I could have testified to that, but I may have misspoken myself. If so, I apologize to the Committee.

Mr. ROOSEVELT. Thank you.

The CHAIRMAN. Have you finished? There was a possible tax liability of substantial amounts for the years 1954 through 1957. Wouldn't good judgment dictate that an extension of the statute of limitations should be obtained for those years, Mr. Harding?

Mr. HARDING. I think I have answered that question, Mr. Chairman.

During our hearing of August 10, I pointed out the following to you:

Mr. Donald R. Moysey, District Director of Lower Manhattan, recommended that the Fund's tax exemption be revoked retroactively. We also know that, by letter of January 7, 1958, Mr. Raphael Meisels, suc-

cessor to Mr. Moysey, upheld the latter's recommendation that the Fund's tax exemption be revoked "retroactively and progressively."

Then by letter of March 24, 1960, Mr. Kenneth W. Moe, District Director of the Lower Manhattan District and successor to Mr. Meisels, overrode the recommendations of the two previous District Directors, and advised the Kaplan Fund that its tax returns for the years 1952 through 1956 "will be accepted as filed," and that the Fund "was exempt from Federal income taxes for such years."

Mr. Moe's letter of March 24, 1960 to the Kaplan Fund gives no indication of why the Fund's tax returns were accepted as filed for the years 1952 through 1956. You stated that you would supply for this record the reasons for the IRS decision that the Fund "was exempt from Federal income taxes for such years."

On September 1 you stated that the information would be submitted to us shortly. Have you prepared that information?

Mr. HARDING. No, sir. That, among the other residual items of the August 10 record, are in process for presentation to your Committee.

Could I make one statement, Mr. Chairman, that will, perhaps, clarify to some extent some of the misapprehensions about this case?

The procedure which we followed in these cases involves a letter to the taxpayer proposing the revocation. The taxpayer is afforded, and I think we would all agree that every taxpayer should be afforded, an opportunity to present his case back to the Service.

In this particular case, after the initial proposal, the taxpayer presented his case to the District Director. There had in the interim been a change in District Directors. The District Director thereafter reaffirmed his predecessor's finding in the case.

The taxpayer has, however, an additional element in his due process involving an appeal to the national office by virtue of the fact that final decision in these matters is within our jurisdiction here.

He made his appeal to the national office, and on the basis of his appeal to the national office, our so-called technical advice to the then Third District Director, Mr. Moe, recommended, if he so concurred, the continuance of the tax exemption of the Foundation. This is the reason, and this is the process through which we went in the case of the Kaplan Fund. This is not, as it might appear, three independent judgments.

Mr. ROOSEVELT. Mr. Harding, there is somewhat of an ambiguity—Mr. Chairman, if I may?

The CHAIRMAN. Yes, sir.

Mr. ROOSEVELT (continuing). Ambiguity in that statement, because you say the taxpayer, in his due process, has an appeal to the national office.

Mr. HARDING. First to the Director, Mr. Roosevelt, and then to the national office.

Mr. ROOSEVELT. Right.

And he took it to the Director first; he was turned down. Then presumably from your statement he then took an appeal to the national office.

You then tell us that, unless I misunderstood your words just now, that what the national office does is only to give technical advice upon this to the Director, and does that make an independent judgment?

Mr. HARDING. Our technical advice is very persuasive to our District Directors, Mr. Roosevelt.

(Laughter.)

Mr. ROOSEVELT. But the thing that intrigues me is, at the same time, I think I am correct in stating, that the whole matter was then referred back to the District Office, and then the District Office presumably reversed itself upon your urging or, if that is the proper word, upon your technical advice and urging.

Now, this is really then not the same as having the national office make a clear-cut final appeal decision. It simply means that you put pressure on the District Office to take your technical advice, and so it is really the District Office that still does have the final say; is that correct?

Mr. HARDING. Well, Mr. Rogovin will respond to that.

Mr. ROGOVIN. Mr. Roosevelt, the technical advice that emanates from Washington is on the technical issue.

When the District Director's revenue agent makes his determination of a fact, no one in Washington is in any position to quarrel with it nor do they intend to quarrel with it. It then becomes a question of whether these facts reach a certain legal conclusion, and so when the request for technical advice comes to Washington, with the facts that exist, the Washington office says, "On the basis of these facts we believe the answer should be thus and so."

Then this goes back as a matter of law, as a technical interpretation of the existing law. Then it goes back to the District Director, and within this memorandum of technical—

Mr. ROOSEVELT. Is it binding on him or not binding?

Mr. ROGOVIN. Well, as far as the law is concerned it is binding on him. But it points out that we are giving this weight to these facts. If the facts are not as have been initially indicated, or if there are additional facts, why then, of course, this particular technical advice will not be binding and the District Director would be free to say, "In our judgment the facts do not demonstrate this."

So that the persuasive nature remains as long as it is a technical or legal issue. But if the facts are found to be different then the District Director is perfectly privileged to make his own judgment.

Mr. ROOSEVELT. Well now, as I understand it, all of this Kaplan Fund material was then sent back to the District office, and that is what caused the delay in getting this other information to the Committee; is that correct?

Mr. HARDING. There is a current investigation of the Kaplan Fund in New York, and it is under investigation at that point; yes, sir.

Mr. ROOSEVELT. What has caused the delay in getting us the reasons that are contained in this technical advice?

Mr. HARDING. Most of the delay, Mr. Roosevelt, is that I was on two weeks' leave.

Mr. ROOSEVELT. It is not because it is in the New York office?

Mr. HARDING. No, sir. We are getting the information from New York and from our own people here in the technical organization, and we will supply the answer at the earliest possible date.

With the Chairman's permission, we were granted an extension of two weeks in order for me to be able to review the material which we propose to send to the Committee.

Now, since I have been back this week, as you know, I have been otherwise occupied, and it has been difficult for me to get over this material.

Mr. ROOSEVELT. I think the thing, the basic thing, that keeps bothering me is that we have a reversal here of a District Office upon so-called technical advice which you tell us is the result of an appeal by the Kaplan Fund to the national office.

Now, on the other hand, if I understood Mr. Rogovin correctly, this would be the normal process anyway. The set of facts would be forwarded to the national office, and then you would make in the national office a determination as to whether the facts as presented justified a certain specific finding under the law.

Mr. HARDING. That is right.

Mr. ROOSEVELT. So really this is not an appeal by the Kaplan Fund, is it? Did they file an appeal?

Mr. HARDING. They are allowed to supply a brief based upon the prior findings by the Director, and the entire record is considered by the national office in giving its technical advice.

Mr. ROOSEVELT. Is that what took place?

Mr. HARDING. Yes, sir.

Mr. ROOSEVELT. You know as a fact that the Kaplan Fund did file this brief from the opinion on the set of facts presented by the District Office?

Mr. HARDING. It is my recollection of the case, Mr. Roosevelt, that they did file a brief in this case.

Mr. ROOSEVELT. I yield to my friend.

(See pp. 196-197 and Exhibit 12, p. 312 for subsequent response of Acting Commissioner Harding.)

Mr. STEED. Mr. Harding, in this case Mr. Kaplan had his day in court before the District Director, and he lost. So he brought it to the Washington office and presented his case there. Could it be possible that he was able to present additional or different or better materials at the level of the national case that did not appear in the case at the District level?

Mr. HARDING. That is a possibility, yes, Mr. Steed.

Typically in these cases where we go through this revocation procedure, there are a number of stages involved, a number of briefs submitted, additional material requested and submitted before the technical advice is given by the national office.

But the crux of the matter is, I think, rather than the additional material that might or might not be submitted, is the fact that the national office has within its organization the particular expertise that attempts to put these facts up alongside the law and the regulations, and draw the conclusion from those facts in the light of those regulations.

The CHAIRMAN. I would like to get a question clarified, Mr. Harding. With respect to the Life Line Foundation, an Examiner recommended that their tax exemption be revoked, I believe, in September 1962, and this recommendation was affirmed by the Baltimore District Director in March, I believe, 1963. Is that correct?

Mr. HARDING. I do not recall the dates, Mr. Chairman, but there was such a proposal.

The CHAIRMAN. Now, you testified yesterday—and I can see logic and reason supporting what you said—that when you revoke a tax exemption, the donors are not called upon for taxes. In other words, the revocation does not affect the people who gave the money.

Mr. HARDING. Typically.

The CHAIRMAN. The people who gave the money to the foundation will not be taxed because you presume—and I think you are right—that they were acting in good faith since the foundation had a tax exemption to show to prospective donors.

For that reason, don't you think that is more of a challenge to the IRS to be on the alert and make sure that you quickly end a tax exemption when you are justified in doing so. If you do not revoke quickly and you allow them to continue in business and to take donations, it is a great disservice to everybody concerned. Do you agree with that?

Mr. HARDING. I agree, Mr. Chairman.

The CHAIRMAN. Now, this Life Line case looks to me like a pretty clear case. I cannot understand, for the life of me, why you would hesitate on this at all.

Of course, Mr. H. L. Hunt says that this would deny people the right of getting valuable information on matters of great importance, on values that they should know about, including spiritual values and everything else, and they should not be denied this information.

Well—Mr. Hunt is a man of great wealth, and I think he would be able to struggle along for awhile if he had to furnish this information to the people with his own money. He should not object to doing this if he is the dedicated person that he claims to be—and I am not denying that he is a dedicated person.

If his wealth is as great as has been represented in the press—and I have not seen any denial from Mr. Hunt on this—it probably runs to \$50 million—\$100 million a year. Now, under favorable tax laws, let us say that, at the end of a year, Mr. Hunt puts \$100 million on a table (even though I cannot conceive of \$100 million on a table). He first reaches out and pushes aside \$27.5 million of that money on which he pays no tax at all. So, that is not hurting him very much. Then, he takes the remainder, and the deducts move in on it, including the deductions for his contributions to his foundations. Well, by the time the deducts get through with it, there is not much left for Uncle Sam. Uncle Sam doesn't get anything.

That is happening all over the country, of course. In the case of Mr. Hunt, the foundations that are carrying on his crusades should not suffer for lack of funds for some time to come—if he is as dedicated as he claims to be.

Mr. Roosevelt.

(Discussion off the record.)

Mr. ROOSEVELT. I want to go back a minute to this Kaplan thing. As I understand it, the information on the 1957 return or recommendation came into the national office in 1958, which passed on it in 1960, is that correct?

Mr. HARDING. Well—

Mr. ROOSEVELT. Just prior to the time limitation running out.

Mr. HARDING. You mean when the 1957 return came in would have been about the time of the expiration of that year; yes, sir.

Mr. ROOSEVELT. No, no. The revocation recommendation or finding which was appealed, that information came in to the national office in 1958, is that not correct?

Mr. HARDING. Some time subsequent to 1958, I do not know the date, Mr. Roosevelt, but it would have been after the first denial.

Mr. ROOSEVELT. I think it was September of 1958 to be specific. Now, it was not passed on until some time in 1960, just prior to the expiration of the statute of limitations; that is correct, is it not?

Mr. HARDING. Yes, sir; that would be right.

Mr. ROOSEVELT. Am I also correct in saying that, if fraud is found at a later time, the statute of limitations, even though it has run, does not apply, and you can go back?

Mr. HARDING. I have to ask my lawyers to answer that.

Mr. ROOSEVELT. I am not a lawyer either; that is why I ask the question.

Mr. COHEN. That is correct, sir.

Mr. ROOSEVELT. Thank you.

I would just suggest that, perhaps, if we find fraud we might go back, even though you have found the statute of limitations to run in view of what has been presented, and we might make sure there is not any fraud in those supposedly closed years.

Mr. HARDING. We always attempt to make sure about that.

The CHAIRMAN. The Secretary of the Treasury has testified that it is the Treasury's duty to be alert to all possible violations of law. The Secretary also says (1) he does not consider it proper for a foundation to engage in insider's stock deals, stock price manipulations, short sales, margin trading, speculation in commodity futures, or to act as an unregulated source of stock market credit, and (2) the SEC should be alerted to the possibility of a foundation's involvement in insider deals and stock price manipulations.

Yet, testimony before this Subcommittee indicates the following:

- The IRS does not examine foundations to determine whether they are violating any Federal securities laws—including those relating to insider's stock deals, stock price manipulations, and unregulated sources of stock market credit.

- The IRS has not collected any information as to the extent that foundations are involved in speculation and trading on margin.

- The IRS has not collected any data on the involvement of foundations in corporate proxy fights.

- The IRS does not examine the foundations to determine whether they are violating any CAB regulations.

- The IRS does not examine foundations to determine whether their foreign operations may be in conflict with Government policies.

- The IRS does not examine foundations to determine whether the foundations are channeling income and corpus in a direction that may hurt competitors and investors.

- The IRS does not examine foundations to determine whether they are being used as a device for engaging in various trade practices which might be in violation of certain statutes administered by the Federal Trade Commission or the Antitrust Division.

- Few of the persons in the IRS who examine foundation tax returns would be sufficiently familiar with the antitrust law to know whether the practices as cited may violate Section 5 of the FTC Act or the Sherman Act.

- The IRS does not examine foundations to determine whether there is a conflict of interest between the duties of a foundation's directors or trustees and their interests as officers, stockholders and em-

ployees of business corporations whose stock is controlled by the foundation.

Additionally, we have gleaned the following from the testimony:

- The Secretary of the Treasury says that the Treasury does not know how many tax exempt foundations there are.

- You do not know how many IRS employees are assigned to supervising tax exempt foundations.

- The IRS generally leaves it up to the officers of a foundation to decide what salaries they pay and the expenses they desire to pay.

- You do not know of any cases where compensation of officers, directors or trustees among the large foundations has been unreasonable or unjustified. Yet, Mr. Benson Ford received \$15,000 for attending three meetings of the Ford Foundation.

- The IRS does not review a foundation's individual charitable donations.

- The IRS has no rule of thumb regarding the percentage of income that a foundation must spend for the purpose for which it was granted tax exemption.

- The IRS does not examine foundations to determine whether contributions are being made to the foundations by persons or organizations that supply goods or services to companies interlocked with the foundations.

- The IRS does not know how much money was spent overseas by U.S. foundations in 1963.

- The IRS does not examine foundations to determine whether they are making loans overseas that may be contributing to our balance of payments problems.

This is the most impressive record of do-nothing that I have seen in my 36 years in Congress. When it comes to the proper policing of tax exempt foundations, the IRS appears to be totally impaled in the quicksands of absolute inertia.

Mr. Roosevelt.

MR. ROOSEVELT. Mr. Chairman, I have no question. I think, perhaps, Mr. Harding might like to reply.

THE CHAIRMAN. Would you like to comment, Mr. Harding?

MR. HARDING. Very briefly, Mr. Chairman.

In the first place, let me say to you as Mr. Caplin has said to you, as I have said to you, that we are not exceedingly proud of our record of the extent to which we have made tax examinations of foundations in the years gone by.

As you are well aware, sir, we have greatly increased not only the quantity but the quality of those examinations. Therefore, to the extent that we can be criticized for past years in our examination or the lack of our examinations or the quality of our examinations of tax exempt foundations, I accept as the Acting Commissioner responsibility for that failure.

On the other hand, sir, as regards many of the items, without getting into any argument as to whether or not your list correctly reflects the record, the Service cannot plead guilty to failure to enforce FTC regulations, or CAB regulations, SEC regulations, et cetera, et cetera.

I feel that there has been, perhaps, some misconception that the role of the Revenue Service is that of a general policeman of all activities of charitable foundations. I state to you, sir, as I have stated numerous

times during the previous sessions, that we do not see that as our role; that this is not our responsibility under the law and, therefore, I do not accept responsibility for those items.

Mr. ROOSEVELT. Mr. Chairman, may I now ask questions?

The CHAIRMAN. Mr. Roosevelt.

Mr. ROOSEVELT. Mr. Harding, on the other hand, with the information which Mr. Patman has read into the record, or the statement which Mr. Patman has read into the record, would you not agree that the present size of the business of tax exempt foundations justifies more regulation than the examination you make for tax purposes? In other words, you have said, in essence, to us that within the concept of the IRS there is no proper responsibility for the accumulation of this information or for the interchange of information with other government agencies which would enable the law of the land to be properly enforced. Does that therefore not lead to the conclusion that either the statute must instruct the IRS to do these things so that you are responsible, and thereby pinpoint the responsibility, or take it away from you altogether so that it is not left in limbo. Perhaps it might be given to a special division of the Treasury or to some other governmental agency where these responsibilities can be carried out.

I hope you would agree that it is in the public interest that this information is available. It affects the public interest very greatly, the fiscal policy of the government and other areas. It would seem vital that something be done about it if, as you may very properly say, you refuse responsibility because there is no place where it is directly handed to you?

Mr. HARDING. Well, Mr. Roosevelt, I think that it would be improper for me to draw a conclusion as to whether or not there should be a general policeman assigned to charitable foundations. I think that is a matter for discussion between the executive and the legislative branch.

Mr. ROOSEVELT. But you have said that you are not the policeman, period.

Mr. HARDING. I have said, sir, and I think Mr. Caplin has said, that we do not have responsibility.

I would like to correct, however, a bit of what you said. I did not say that we would not turn information over to these agencies if it came to us in the course of a tax examination. I also stated, however, that we do not make our examinations for the purpose of determining those violations. We leave that to the enforcement activities of those other agencies.

Mr. ROOSEVELT. Let me put it this way: A field auditor does not have the competence under normal circumstances to know whether an SEC regulation has been violated, does he?

Mr. HARDING. I think I testified that certain of our more sophisticated agents would probably recognize some of these violations; yes, sir.

Mr. ROOSEVELT. Some of these. That is a relatively few of the total.

Mr. HARDING. Not in great depth.

Mr. ROOSEVELT. And you do not supply sophisticated investigators on the foundations.



Mr. HARDING. We are putting sophisticated ones into certain areas of the country.

Mr. ROOSEVELT. Are you saying that you are capable of doing the job if Congress gives it to you?

Mr. HARDING. No, sir; I am not saying that in all regards. I am saying that certain obvious violations of other sections of the U.S. Code, other than those which we are charged with administering, might well be recognized by some of our more capable agents.

I am not saying, sir, that we have the competence or expertise to police foundations for all of the myriad violations of Federal law that they might become involved in.

The CHAIRMAN. If you would permit an interruption, Mr. Roosevelt. Mr. Harding, you did testify that you feel morally bound to submit to these agencies any information that comes to you in violation of the law or regulations?

Mr. HARDING. Yes, sir; I did.

Mr. ROOSEVELT. Is there a direction to the field agent to that effect?

Mr. HARDING. Yes, sir; there is.

Mr. ROOSEVELT. Would you supply it to the Committee?

Mr. HARDING. I would; yes, sir.

(The information submitted by the IRS, under date of September 22, 1964, appears as Exhibit 42, pp. 393-395.)

Mr. ROOSEVELT. The reason—counsel points out to me—the reason behind my question was, that I think in previous testimony you stated you had not forwarded any information of the possible violations to any of the agencies. My question is why was it not forwarded?

Mr. HARDING. I assume it was not detected. I said we had no record of any violations of these areas being forwarded.

Mr. ROOSEVELT. It would seem strange that an individual, such as our counsel, who does not do this around the clock, could find things, and yet your agent would not if he was under a directive to do it, if he is as sophisticated as you say he is. I just happen to assume he is not quite as sophisticated as you assume he is, and I am not placing any blame on him. I think the IRS is not the place where the responsibility should be placed. But it has to be placed, I think that will be conceded.

Mr. STEED. Mr. Harding, in order to keep this whole thing in more proper focus, I have been under the impression, and I would like for you to correct me if I am in error, that part of this problem stems from the fact that there has been an unprecedented increase in the number of and activities of these foundations in recent years, and that you are just now working up to the fact that we find ourselves confronted with a myriad of problems that in the early days of tax exempt foundations did not seem to exist. Is that a proper analysis of part of the reason why we find ourselves currently confronted with so many of these inequities and problems?

Mr. HARDING. There has been a tremendous growth in this area both in terms of number of entities and in terms of size of the operations of those tax exempt organizations. It has been a growth which our examination forces have not kept up with, and it is certainly an element in the problem. You are perfectly correct, sir.

Mr. STEED. Doesn't that very fact though indicate that we are now at a point where a revision and a redress and expansion of the government's capability of coping with this matter should be looked into and something done about it?

Mr. HARDING. I think on at least, certainly on one front, Mr. Steed, \* \* \* to which the Secretary testified \* \* \* that there needs to be a clarification, some adjustment, in the basic law under which we operate. This is one of the difficulties that we have had over the years. So this certainly needs to be done, and the Secretary has testified that it will be done.

It certainly indicates also that as far as the Revenue Service is concerned, and assuming we continue our present role of examining these foundations for tax consequences, that we need to continue to devote the efforts that we have been devoting to this problem over the last three years, and if at all possible within the limitations of our budget, increase the funds available to us for making these examinations.

This is all apart and aside from the more fundamental question which the Chairman and Mr. Roosevelt raised as to whether or not there needs to be some type of super police organization established which would have responsibility for auditing these corporations, these foundations, for all aspects of their activity involving all responsibilities which they have under the laws of this country.

Mr. STEED. Well, I cannot help but feel that this unprecedented growth of activity both in numbers and in size and all that in this field, is a major contributor to our problem and, of course, I think it is safe to assume if one wise guy thinks up one of these stunts and it works, it encourages others to do likewise, so it is a rather snowballing, cumulative sort of thing to play all these apparently fancy games with tax exempt devices that we see revealed here as you go into the case histories of some of them.

Mr. HARDING. This is, of course, true, Mr. Steed; and you, as a member of our Subcommittee on Appropriations, are well aware of the fact that we have a myriad of problems in the tax field as well as the tax exempt field, and in this area, in the activities of corporations and of individuals in a growing, expanding economy, and these problems are becoming more acute.

The number of gimmicks, if you will, that are being thought up almost defy our ability to keep up with closing the loopholes. So that what you say about tax exempt foundations is particularly true.

It is part of a general fabric of our economy, the growth of our economy, and the growth of the problems we have in administering the tax laws of this country.

Mr. STEED. I think if the Congress and the Administrative Branch cannot get together and work out some better answers to this whole thing, we are just going to wind up finding ourselves faced with a situation where you just have made a farce of a lot of these, what started out to be, very worthwhile programs, and I think the public interest cries out for a solution to it.

Mr. HARDING. I would certainly agree, Mr. Steed.

The CHAIRMAN. During our hearings of August 10, you indicated that the Foundation Library Center had instructed Mrs. Tinsley to photograph only schedules that were not prohibited. I have in my

hand a copy of the Foundation Library Center's instructions to Mrs. Tinsley and suggest that you have a look at them. Will you take this to Mr. Harding, please.

(The documents referred to appear as Exhibits 43 through 46, pp. 396-399.)

Mr. HARDING. Mr. Chairman, I would be happy to do that. I would like, however, specific reference to my testimony to that effect. I have no recollection of making that statement at this time.

The CHAIRMAN. That was our interpretation.

Mr. HARDING. Well, sir, I frankly do not know what the instructions to Mrs. Tinsley were except those that involved us.

The CHAIRMAN. My information is that this Xerox copy is the statement that was given to Mr. Olsher when you were present and as per instructions. If you will notice on page 1, line 17, which deals with contributions received, you will see the language "need schedules if supplied." Yet you have indicated that the statute prohibits such schedules from being made available for public inspection. How do you explain the fact that Mrs. Tinsley was allowed to have the schedules?

Mr. HARDING. I cannot explain that, Mr. Chairman. I am afraid I don't—is this document which I am looking at a photocopy of something?

The CHAIRMAN. Yes, sir. It is a copy of the one that was given to Mr. Olsher when you and he were talking to Mrs. Tinsley.

Mr. HARDING. The only copy—

The CHAIRMAN. It is a copy of the original, that is what it is.

Mr. HARDING. Is this the Stephens Foundation? This is the only document that was transmitted to Mr. Olsher.

The CHAIRMAN. No, the Library Center Foundation.

Mr. HARDING. The only copy of anything that I saw transmitted to Mr. Olsher was a photocopy of a part 1 of the return of the Stephens Foundation.

The CHAIRMAN. We are talking about the Library Center. You see, the object—

Mr. HARDING. Yes, sir. But we were in the Library Center at the time.

The CHAIRMAN. Regardless of all that, the fact remains that this was given to her by the Foundation Library Center as instructions for photocopying foundation tax returns.

Mr. HARDING. Well, sir, if I understand what this document is, that this is her guideline—

The CHAIRMAN. That is right.

Mr. HARDING (continuing). To what she reproduces.

The CHAIRMAN. That is right; that is correct.

Mr. HARDING. If I read this line 17 correctly, if the taxpayer, as in the case of the Stephens Foundation, waived his right to hold confidential the list of donors and attached it to part 2 of the 990, she would, as she did in the case of the Stephens Foundation, reproduce that copy and give it back to the Foundation.

The CHAIRMAN. You construe that to mean then only in cases where she was permitted to do it—

Mr. HARDING. Of course, sir.

The CHAIRMAN (continuing). By regulation?

Mr. HARDING. Because this was all she would have, sir. Not having part I (and if the taxpayer follows the rules he attaches the list of donors only to part 1), she cannot therefore have access to that section.

The CHAIRMAN. You insist she would not have it if it were unauthorized?

Mr. HARDING. She would not have part 1, which is the file copy, the Revenue Service copy, of the return; and if the taxpayer meticulously followed the instructions, he would attach the list of donors only to part 1.

In the case of the Stephens Foundation, knowingly their accountants attached it to part 2 as well, and that was the reason she had it in that case.

The CHAIRMAN. Well, now, was consent given by implication—by the fact they attached it to part 2, page 2?

Mr. HARDING. Yes, sir. So far as I know there was no—

The CHAIRMAN. In other words, you presume this gave you the right to have it copied because it appeared where they did not have to insert it?

Mr. HARDING. Yes, sir.

The CHAIRMAN. And that was the power of attorney, you might say.

Mr. HARDING. We take the position realistically, Mr. Chairman, that the taxpayer knowingly gives us part 2, he may have 50 schedules attached to it; he knows this is a public document, he knows it is going into our public disclosure records.

We are not in position to screen all of those and correct anything that the taxpayer may have done, so we must accept—

The CHAIRMAN. You presume he expects it to be made public?

Mr. HARDING. Yes, sir; and, of course, in the Stephens Foundation case we did supply you a letter which stated the accountant's intent in that regard.

The CHAIRMAN. Did you say that the Stephens Foundation gave you consent?

Mr. HARDING. No, sir. I said—

The CHAIRMAN. Or that you got consent by reason of attaching it to page 2?

Mr. HARDING (continuing). I said that we presumed their willingness for public disclosure by their act of attaching it to part 2.

We subsequently, after the question was raised by Mr. Olsher, received verbal communication from their accountant to the effect that it was their intention. We subsequently had that confirmed by a letter which has been submitted to this Subcommittee.

The CHAIRMAN. What is the date of the letter?

Mr. HARDING. I do not recall the date of it—August 11, I am informed.

The CHAIRMAN. And you got the consent prior to that time verbally?

Mr. HARDING. We had gotten the information from the accountant that it was his intent to make that part of the public record.

The CHAIRMAN. Was that 2 or 3 weeks ahead of the letter or would you know?

Mr. HARDING. This was before the letter. It was prior to testimony by Commissioner Caplin on July 22.

The CHAIRMAN. How many questionnaires did the IRS send to tax-exempt organizations? What was the date of that questionnaire?

Mr. HARDING. Could I supply that exact figure for the record, Mr. Chairman?

The CHAIRMAN. Yes, sir.

(Following is the information submitted by the IRS, under date of September 25, 1964. The questionnaire appears as Exhibit 47, pp. 400-403.)

In June, 1964 the Service developed the attached questionnaire (Form M-0284 for use in obtaining certain current information from organizations exempt from tax under section 501(a) or 521 of the Internal Revenue Code. The information sought is pertinent to our program to convert our records on tax exempt organizations to the use of automatic data processing equipment.

The questionnaire is being sent to exempt organization in the following order:

1. 260,000 were mailed during the first two weeks of August, 1964 to all exempt organizations filing annual returns, except for exempt pension trusts filing on Form 990-P;
2. 200,000 are to be mailed during mid-October 1964 to those exempt organizations which are not required to file annual returns; and
3. 80,000 are to be mailed in the spring of 1965 to exempt pension trusts filing on Form 990-P.

The CHAIRMAN. How many questionnaires did the Office of Tax Analysis of the Treasury Department send out? Their questionnaire carries the date of July 17, 1964.

Mr. HARDING. My recollection is, sir, it was approximately 1,300.

The CHAIRMAN. In your view, should income, gift and estate tax deductions be allowed for contributions of corporate stock to a foundation where the foundation receiving the stock and the corporation issuing it are both controlled by the donor or his family?

Mr. HARDING. Mr. Rogovin tells me that it is existing law that these are deductible.

The CHAIRMAN. What is your view on it? Do you think it should be existing law?

Mr. HARDING. Mr. Chairman, I would respectfully rather pass that question as being a matter of tax policy and legislative policy.

The CHAIRMAN. Between the Executive and the Legislative Branch, I assume?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Do I understand correctly that the fair market value of a gift to a charitable organization is deductible for income, gift or estate tax purposes by the donor?

Mr. HARDING. Yes, sir.

The CHAIRMAN. The fair market value?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Do you agree that the tax deduction feature of a charitable contribution is a matter of considerable interest to a person of wealth?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Would you agree that this is especially true in the case of the estate tax which requires that all property owned by an individual at his death be aggregated and taxed at its fair market value?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Would you agree that foundations can contribute to unfair disposition of power and influence arising from the use of foundations to maintain family control of businesses?

Mr. HARDING. Here again, sir, I think that possibility exists. I think it is primarily a legislative consideration, however.

The CHAIRMAN. Would you agree that, although the immediate purpose of the imposition of estate taxes in the United States was to raise revenue, there is little doubt that the philosophical basis was a social and economic one? As you know, the estate tax did not become a permanent part of the Federal reserve system until 1916. There had been a long history of concern, however, over the concentration and perpetuation of economic power.

One of the principal counter measures advocated was the estate tax, and this had a broad spectrum of support from a wide variety of persons of differing political views.

Mr. HARDING. I think that that was an element, Mr. Chairman, although I am not really a very competent witness on that subject.

The CHAIRMAN. Would you agree that the accepted social purpose of the estate tax is to break up concentrations of economic power?

Mr. HARDING. I am not competent on that subject, Mr. Chairman.

The CHAIRMAN. Would you agree that private charitable foundations are being widely used today to neutralize the social policy of the estate tax as well as to reduce the tax due on large estates?

Mr. HARDING. I think that this is a tax legislative matter that really I should not respond to.

The CHAIRMAN. Would you agree that foundations are established, at least in some cases, for the following purposes:

(1) to reduce estate taxes and thereby lessen, or do away with entirely, the necessity for liquidating holdings in a family-owned or controlled business; (2) to retain active control of a business, although ownership is divested, by appointing family members or close associates as directors of the foundation?

Mr. HARDING. I think there has been some evidence to that effect, Mr. Chairman.

The CHAIRMAN. Would you agree that the securities holdings of foundations suggest that the desire to maintain control, while giving up ownership, may be reasonably widespread?

Mr. HARDING. I cannot really respond to that, Mr. Chairman.

The CHAIRMAN. Would you agree that, in many cases, it is not necessary to own a majority of a stock to have effective control?

Mr. HARDING. Yes, sir; this can be done.

The CHAIRMAN. Would you agree that it is possible to maintain control by contributing non-voting stock which represents the principal share of the assets of a corporation while retaining the voting stock?

Mr. HARDING. This is a possibility, yes.

The CHAIRMAN. Would you agree that it is a simple matter for anyone to form a foundation as a trust or non-profit corporation under state law and personally to designate the trustees or directors to manage its affairs?

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Mr. HARDING. I think that is right, yes, sir.

The CHAIRMAN. Would you agree that a common non-charitable motivation for creating a foundation is to perpetuate family control of a business?

Mr. HARDING. Well, Mr. Chairman, I think I have before asked not to testify as to motivation of these creators, and I would respectfully ask not to respond to that.

The CHAIRMAN. In your view, does the charitable performance of a foundation operating with the auxiliary purpose of holding stock in a family business for the protection of the donor's family, justify the allowance of tax deductions to the donor or to his estate for contributions of the stock to the foundation?

Mr. HARDING. That, sir, I think is a tax policy question again.

The CHAIRMAN. In your view, should income and gift tax deductions be allowed for contributions of non-income-producing property (other than money) to a foundation controlled by the donor or his family when the foundation has no apparent use for the property?

Mr. HARDING. A tax policy question, Mr. Chairman.

The CHAIRMAN. Would you agree that frequently donors give to their private foundations items of non-income-producing property which obviously are useless for the foundation's purposes until the property is sold and the proceeds either reinvested in income-producing assets or expended in charitable activities?

Mr. HARDING. I think this is correct, sir.

The CHAIRMAN. Would you agree that, when a donor-controlled foundation retains gifts of non-income-producing property from the donor for which the foundation has no apparent use, the implication is that the foundation is doing so for the private advantage or enjoyment of the donor?

Mr. HARDING. I guess that is possible, Mr. Chairman.

I think your previous question, however, stated that in many of these instances the property was subsequently sold representing income to the foundation.

The CHAIRMAN. That is right. In your view, should foundation loans of money or other property to, and purchase, sale, exchange and lease transactions with, donors, related persons, controlled businesses and their employees and foundation trustees and directors, be prohibited as a condition to continued tax exemption for the foundation?

Mr. HARDING. That is a tax policy question, Mr. Chairman.

The CHAIRMAN. Would you agree that there is ample evidence that some donors find it hard to forget that the foundation's assets once belonged to them?

Mr. HARDING. I think that we have seen some of that, yes, Mr. Chairman.

The CHAIRMAN. Would you agree that there is ample evidence that some donors seem to regard their foundations as reservoirs of capital to be tapped in time of personal need?

Mr. HARDING. I think there has been some evidence along that line, too, sir.

The CHAIRMAN. Would you agree that it is not at all unusual for a donor to call upon "his" foundation to lend him money, to purchase his property or to sell or to lease to him its property?

Mr. HARDING. There have been indications; yes, sir.

The CHAIRMAN. Would you agree that there is a lack of legally enforceable fiduciary standards to restrict self-dealing by those in control of foundations?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Would you agree that most state authorities evidence almost no awareness of this responsibility?

Mr. HARDING. There seems to have been a certain lack of exercise of responsibility in this area; yes, sir.

The CHAIRMAN. Since foundations are funded with tax deductible contributions and earn tax exempt income, would you agree that the problem of self-dealing may appropriately be considered at the Federal level?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Would you agree that although loans to a donor must be at a "reasonable" rate of interest with "adequate security," and although his purchase and sale transactions with his foundation must be at "adequate" consideration, these are hardly fiduciary standards?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Would you agree that, when directors of a foundation are selected because of their familial relationship or personal loyalty to the donor, it is too much to expect that they will rigidly adhere even to those guidelines in approving the donor's self-dealing?

Mr. HARDING. I think it raises a very difficult problem, Mr. Chairman.

The CHAIRMAN. Is it unreasonable to require the IRS to police such transactions to insure that arm's length formalities are observed in transactions which are not at arm's length?

Mr. HARDING. I think, Mr. Chairman, that we should be in a position to so police the foundations.

The CHAIRMAN. In your view, are further statutory restrictions required with respect to the management and investment of foundation's principal and income?

Mr. HARDING. I respectfully refer that to the Treasury Department, sir.

The CHAIRMAN. Do I understand correctly that the Code does not impose any specific restrictions on the manner in which a foundation invests its principal except that a foundation may be subject to taxation on income from unrelated business activities carried on directly?

Mr. HARDING. Yes, Mr. Chairman.

The CHAIRMAN. Do I understand correctly that the Code does impose certain limitations on reinvestment of foundation income?

Mr. HARDING. Yes.

The CHAIRMAN. What are the limitations generally?

Mr. HARDING. Just let Mr. Rogovin answer it. He remembers the Code section better than I do.

Mr. ROGOVIN. With respect to the unreasonable accumulation provisions, there is also reference to investments of income which would be of such a speculative nature as to jeopardize the carrying out of the organization's exempt purpose. This type of investment would be prohibited, as well as an overall limitation on investments which



reflect a non-exempt purpose or which subserve the legitimate interests of the foundation.

The CHAIRMAN. In your view, should a foundation—which is conducting a substantial business operation—be entitled to tax exemption as an organization “organized and operated exclusively for charitable purposes,” even though the foundation may be willing to pay taxes on its unrelated business income?

Mr. HARDING. I think that is a tax policy question, too.

The CHAIRMAN. Would you agree that there is ample evidence that, in order to avoid possible loss of tax exemption, some foundations, which contemplate the operation of a business, find it expedient to incorporate their business ventures in the form of wholly-owned “feeder” subsidiaries?

Mr. HARDING. Yes, there is that, Mr. Chairman.

The CHAIRMAN. Do I understand correctly that the business profits of these corporate “feeders” are taxed at regular corporate rates and only the dividends which they pay to their “parent” foundation are exempt from income taxation?

Mr. HARDING. That is correct.

The CHAIRMAN. Would you agree that there is ample evidence that a substantial number of foundations are known to have tax-paying subsidiaries which compete for business with other commercial enterprises which have taxpayers for shareholders?

Mr. HARDING. Yes, Mr. Chairman.

The CHAIRMAN. Would you agree that the difference in tax liability at the shareholder level may afford a competitive advantage to the subsidiary of a foundation (through forbearance of dividend payments)?

Mr. HARDING. I could have that result, Mr. Chairman.

The CHAIRMAN. I do not believe we can finish here by 12:30 or 1:00 o'clock, Mr. Harding, and I suspect it would be in our interest to come back at 2:30. Would that be satisfactory?

Mr. HARDING. Yes, quite satisfactory.

The CHAIRMAN. What about 2:00 o'clock?

Mr. HARDING. At your pleasure.

The CHAIRMAN. If it is all right with you gentlemen, make it 2:00 o'clock.

Mr. HARDING. That will be fine.

The CHAIRMAN. We will recess until 2 o'clock.

(Whereupon, at 12:00 o'clock noon, the subcommittee recessed to reconvene at 2:00 p.m. the same day.)

AFTERNOON SESSION

TESTIMONY OF BERTRAND M. HARDING ACCOMPANIED BY  
MITCHELL ROGOVIN AND SHELDON S. COHEN—Resumed

The CHAIRMAN. The Committee will please come to order.

Do I understand correctly that, if a foundation acquires property with borrowed money, sections 511-514 of the Code tax the rental income as unrelated business income until the underlying indebtedness is satisfied?

Mr. HARDING. Yes, Mr. Chairman.

The CHAIRMAN. Do I understand correctly that the purpose of this rule is to impede a common foundation practice of "bootstrap" acquisitions of property paid for out of tax-exempt rents?

Mr. HARDING. Yes, Mr. Chairman.

The CHAIRMAN. Do I understand correctly that the practice is still prevalent because of the statutory requirement that rental income in these cases is not taxed if the lease involved is for a period of less than five years?

Mr. HARDING. Yes, Mr. Chairman.

The CHAIRMAN. Would you agree that there is ample evidence that, in order to avoid the tax, foundations have discovered that leases and tenants can be arranged so as to come within the exemption without necessitating payment of the underlying indebtedness out of principal?

Mr. HARDING. Considerable evidence, Mr. Chairman.

The CHAIRMAN. Has the IRS experienced difficulty in carrying out the provisions of section 511-514 of the Code?

Mr. HARDING. Mr. Chairman, under the provisions of the law, there is difficulty in terms of what we see to be the equities of the situation. We have tried to enforce it to the best of our ability, however.

The CHAIRMAN. But you have experienced difficulty?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Do you see any inconsistency in the fact that a foundation's capital gains are entered for purposes of income reporting but are excluded for purposes of determining whether an accumulation of income is unreasonable?

Mr. HARDING. Yes, sir; but I think that that is in accordance with the statute.

The CHAIRMAN. In your view, should capital gains be included or excluded for purposes of determining whether an accumulation of income is unreasonable?

Mr. HARDING. I think that is a tax policy question, Mr. Chairman.

The CHAIRMAN. In your view, should contributions received be classed as income and included in determining whether an accumulation of income is reasonable?

Mr. HARDING. The same situation prevails.

The CHAIRMAN. What percentage of funds spent on research in the U.S. was contributed by the Federal Government in 1963?

Mr. HARDING. I do not know the answer to that question.

The CHAIRMAN. Would you have an estimate or could you give us an estimate?

Mr. HARDING. We shall attempt to give you an estimate, yes, sir; based on the best information we have.

(Following is the information submitted by the IRS, under date of September 22, 1964.)

A Report to the President on Government Contracting for Research and Development<sup>1</sup> prepared by the Bureau of the Budget states on page 34:

Through its programs the Federal government now supports over two-thirds of the research and development of the Nation. Of the total Federal expenditures for this purpose about two-thirds are

<sup>1</sup> Report submitted to the Congress and referred to the Committee on Government Operations, United States Senate, May 17, 1962; Senate Document No. 94, 87th Congress, 2d Session.

made through contracts with private industry; over 10% through grants and contracts with universities and other nonprofit institutions; and the remainder by government scientists in Federal facilities.

This statement was based on anticipated Federal net budget expenditures for research and development in fiscal year 1963 of \$12,365 million.

The CHAIRMAN. Fine. Would you agree that research foundations, which receive tax exemption as scientific organizations, present problems unlike those of charitable and educational foundations?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Would you agree that these organizations compete with tax-paying business entities?

Mr. HARDING. That question is difficult, Mr. Chairman. I think that possibility exists, however.

The CHAIRMAN. Would you agree that there is ample evidence that tax-exempt research foundations aggressively seek business offering complete services in the development of new production (such as market analyses, design, engineering and pilot production, test marketing, tooling, etc.), and that they engage in investment counseling, issue restricted patent licenses, manage patents, prosecute infringers, and engage in other activities which are a far cry from scientific research?

Mr. HARDING. I would say, Mr. Chairman, that there is some evidence for that conclusion. I would not be able to say whether it is ample evidence. That would be a legislative determination.

The CHAIRMAN. Do you see a need for a new statutory definition of the term "unrelated trade or business" as it applies to scientific research organizations?

Mr. HARDING. May I consult with my staff?

The CHAIRMAN. Yes, sir.

Mr. HARDING. Mr. Chairman, the problem seems to be in the area of what is to be included in "unrelated business." That, I understand, is not too difficult a question. It is a legislative policy question, of course, as to whether or not that definition should be revised.

The CHAIRMAN. Would you agree that the present situation of tax-exempt scientific organizations does not appear to be that intended by Congress?

Mr. HARDING. I am afraid I cannot speak as to the intent of Congress, Mr. Chairman.

The CHAIRMAN. Would you agree that Congressional intent to tax some scientific research income of exempt organizations is indicated by the Senate Report on the 1950 Amendment, which states that— " \* \* \* a 'grant' by a corporation to be used for research by a foundation with the results of the research to be given only to the grantor would clearly not be a gift and would constitute unrelated business income"?

Mr. HARDING. That would appear to be the Congressional intent, although I am not really expert in that area.

The CHAIRMAN. Has this statutory framework been workable from an administrative standpoint?

Mr. HARDING. It has been very difficult from an administrative point of view, Mr. Chairman.

The CHAIRMAN. Do the Treasury regulations define "fundamental research"?

Mr. HARDING. There apparently is an attempt at defining this, Mr. Chairman. Mr. Rogovin informs me he does not think the definition is particularly helpful.

The CHAIRMAN. As you know, there have been strong complaints registered with this Subcommittee about research foundations competing with taxpaying businessmen. For example, just recently Mr. F. C. Henriques, Chairman of Technical Operations, Inc., of Burlington, Mass., complained to us about "the position of not-for-profit research and development companies, such as Systems Development Corporation and the MITRE Corporation, which charge fees and pay no taxes." Mr. Henriques added.

We are well aware of the recent trend toward the greater use by the military and other Government agencies of not-for-profit organizations. We and other publicly-owned corporations are concerned over the long-term effects of this trend.

We have long had an excellent record in providing systems analysis, operations research, and computer programming services to the armed services and are well aware of and have never violated the requisite confidential relationships to sponsors. This reference has not been made to aggrandize the accomplishments of Technical Operations, but rather to emphasize that we are not afraid to stand on our record of performance or propriety as a Government contractor. We know that we can successfully compete in providing professional services in those areas where we have competence. The problem, and the one that troubles us, is to ensure that we are not barred from competing in a "supposedly" free enterprise economy.

Technical Operations, Inc. is an active member of Smaller Business Association of New England, Inc. I have first-hand knowledge of the impact of the not-for-profit organizations on small businesses in severely limiting, or making impossible, their growth.

I shall also insert herewith copy of a complaint addressed to Senator Edward M. Kennedy by the Brewer Engineering Laboratories, Inc. of Marion, Mass., and forwarded to us by the Senator.

(The insert is as follows.)

BREWER ENGINEERING LABORATORIES, INCORPORATED,  
June 4, 1964.

HON. EDWARD M. KENNEDY,  
Senate Office Building, Washington, D.C.

DEAR SENATOR KENNEDY: We have been meeting increasing competition from privately endowed tax-free research institutions. Two of these foundations are aggressively seeking business in the field of private enterprise, and we have recently lost a contract to the Illinois Institute of Technology because they bid below cost to get the contract away from us. Since their losses will be made up from the funds of the Institute, we cannot compete with them.

We bid the sum of \$7831.00 on a stress analysis study of a Navy heat exchanger for a nuclear submarine. This bid was given to the manufacturer of the vessel, the Struthers Wells Corporation of Warren, Pennsylvania, a past client of ours. The work was to be done under their specification NPD-7197-ESA. The Navy required Struthers Wells to seek two other bids, and this they did with the Illinois Institute of Technology bidding about \$4800.00 for the test and the Franklin Institute of Philadelphia (another endowed nonprofit foundation) bidding about \$11,800.00. IIT sent a sales agent to Struthers Wells who aggressively promoted the cause of his foundation. The Navy insisted upon the lowest bidder receiving the award, so IIT won it.

We recently won a bid for stress investigation of axles on the Trans-Hudson Subway for the Port of New York Authority. Again IIT bid against us, but

our proposal was considered the best technically by the PNYA although our price was higher than IIT. It is my understanding that IIT was sharply critical of the PNYA for awarding us the bid.

As you may see from these examples, IIT, a funded research organization with a non-profit tax position, is aggressively competing with us. These foundations should only enjoy a tax free position if they are engaged in basic laboratory research. Since they are now actively competing in the field of practical engineering, I think they should be required to pay taxes and be deprived of foundation support.

I would appreciate the favor if you would call the attention of the Department of Internal Revenue to the activities of the Illinois Institute of Technology and also of the Franklin Institute.

Perhaps some division of your office could advise me as to the charters of these foundations. It seems difficult to believe that foundations should be legally permitted to compete with private industry.

The Navy should not be allowed to award engineering contracts to these foundations when they compete with private industry. IIT can always underbid me and ultimately perhaps force me out of business since their losses are made up from foundation grants.

I will appreciate any assistance you can give me on these matters.

Yours very truly,

GIVEN A. BREWER,  
*Chief Engineer.*

The CHAIRMAN. Would you agree that patent royalties are much more like business income than investment income?

Mr. HARDING. There is a distinction in the statute, Mr. Chairman, between the two.

The CHAIRMAN. Between patent royalties and investment income?

Mr. HARDING. Yes.

The CHAIRMAN. Would you agree that it is doubtful that Congress intended to exempt patent royalties as another traditional form of investment income for tax-exempt organizations?

Mr. HARDING. I am afraid I cannot make a conclusion as to the congressional intent, sir.

The CHAIRMAN. Would you agree that foundations have reached a new level of importance and influence in the United States?

Mr. HARDING. I think the influence and importance of foundations has increased in the United States.

The CHAIRMAN. Would you agree that the kind of routine chartering followed in most States is not likely to bring out basic facts which should be known before a charter is granted?

Mr. HARDING. I think that is a possibility, yes, Mr. Chairman.

The CHAIRMAN. Would you agree that the chartering process does not provide protection beyond the initial step in the establishing of a foundation?

Mr. HARDING. To the extent that the state does not police those charters, yes, sir.

The CHAIRMAN. Would you agree that, in some states, the attorney general is charged with the inspection duties, but usually the statute charging him with that responsibility is without administrative provisions?

Mr. HARDING. I believe that is generally correct, Mr. Chairman.

The CHAIRMAN. Would you agree that the regulatory machinery applicable to charitable trusts in such that the protection of equity of trusts is more potential than real?

Mr. HARDING. Yes, Mr. Chairman.

The CHAIRMAN. Would you agree that similar enforcement difficulties in the states exist with respect to charitable corporations?

Mr. HARDING. Yes, Mr. Chairman.

The CHAIRMAN. Would you agree that the prevailing state statutes with respect to charitable trusts and charitable corporations do not prevent abuse?

Mr. HARDING. I think this is true, Mr. Chairman.

The CHAIRMAN. Would you agree that, in most cases, foundations do not have parties with adverse interests policing their activities, since foundation trustees are handling a donor's contribution for the benefit of unnamed future beneficiaries who are in no position to claim damages or to seek injunctive relief?

Mr. HARDING. Yes, Mr. Chairman.

The CHAIRMAN. Would you agree that the principal of a foundation needs to be protected against malfeasance, nonfeasance, and incompetence on the part of trustees?

Mr. HARDING. Yes, Mr. Chairman.

The CHAIRMAN. Would you agree that—since grants have become a form of public funds through tax exemption and deductibility—it is not an invasion of sacrosanct private areas to impose penalties for fiduciary irresponsibility?

Mr. HARDING. I think that would be a matter to be left to the states, Mr. Chairman. But as a personal opinion, I would agree with you, sir.

The CHAIRMAN. Would you agree that new standards may be needed to insure responsible management of the principal funds of foundations?

Mr. HARDING. State standards, Mr. Chairman?

The CHAIRMAN. No; would you agree that new Federal standards may be needed to insure responsible management of principal funds of foundations?

Mr. HARDING. I think that is a tax policy question, Mr. Chairman.

The CHAIRMAN. Would you agree that an area that needs attention involves a situation in which a foundation may be utilizing high proportions of its income—and possibly its principal—in wasteful ways, such as in overhead expenses? This situation may arise where the foundation dispenses or directly utilizes only a small proportion of available funds to achieve its stated purposes, and utilizes a relatively high proportion for running the foundation. Thus there may be no unreasonable accumulation of income.

Mr. HARDING. I think, Mr. Chairman, that to change that situation would be a tax policy consideration.

The CHAIRMAN. Would you agree that some guidelines are required with respect to percentage of funds that should be disbursed by foundations annually?

Mr. HARDING. Well, Mr. Chairman, this gets back to this rule of thumb matter.

The CHAIRMAN. Yes, we talked about it the other day.

Mr. HARDING. I would like to point out, sir, as I perhaps should have pointed out at the time you asked me the question in previous

meetings, that there are situations where a foundation, a perfectly reasonable, rational foundation, is attempting to accumulate an amount of funds for the purpose of doing a specific job.

Now, if we were to take the position that they could not make that accumulation to build a hospital or to endow a seat in a university or something of this sort with a rigid rule of thumb for each and every year, I think we would be doing a great injustice to charitable operations in this country. So I would have some reservations about a flat rule of thumb of this sort.

The CHAIRMAN. Well, subject to certain exceptions such as you mentioned. In other words, you could have some flexibility there that would permit it under certain conditions.

Mr. HARDING. Within reasonable ground, Mr. Chairman, I would agree with you.

The CHAIRMAN. Would you agree that one of the steps to guard against potential abuse in the area of wasteful expenditures could be (1) more complete reporting to the IRS of expenses properly classified in accordance with audit guidelines, and (2) the development of criteria for the ratio of allowable expenses to total outgo, with appropriate penalties?

Mr. HARDING. Mr. Chairman, it is always difficult, not only in this area but in the entire tax field, to determine how much of a burden you put on each and every taxpayer in terms of reporting.

For example, an individual might be required to submit, as they do in Canada—

The CHAIRMAN. But these are not taxpayers.

Mr. HARDING. I realize that, but I am talking about a matter of general principle on reporting versus audit examination. We want enough information to disclose to us where an organization needs examination and yet not burden all the taxpayers with over reporting. This is a problem other committees in the Congress are concerned about—the paper work burden that we impose on taxpayers generally. So I think we need to realize that there are two sides to that question.

The CHAIRMAN. Well, as it applies to taxpayers, I think your comments are justified and worthwhile. But, it occurs to me that there is a big difference between taxpayers and tax exempt foundations which pay no taxes. I feel that you should not hesitate to require foundations to submit the fullest information that it is necessary to protect the public interest.

Mr. HARDING. Sir, I do not think we should hesitate to require the information we need from any entity, be it tax paying or non-tax paying. It is a question of judgment as to where you leave off in the requirements for reporting and start to rely on audit examination.

The CHAIRMAN. Would you agree that the possibility exists that a wealthy person could use a foundation to exert influence in a field selected by him?

Mr. HARDING. Yes, Mr. Chairman.

The CHAIRMAN. Would you agree that there is ample evidence that contributions from one donor-controlled foundation to another foundation controlled by the same donor are being used as a device for avoiding unreasonable accumulation of income?

Mr. HARDING. I think that possibility exists.

The CHAIRMAN. Would you agree there should be a prohibition against contributions from one donor-controlled foundation to another foundation controlled by the same donor?

Mr. HARDING. I think that is a possibility, Mr. Chairman.

The CHAIRMAN. Would you agree that a penetrating review of every application for tax exemption is needed?

Mr. HARDING. Yes, Mr. Chairman.

The CHAIRMAN. Would you agree that a national registry of all tax-exempt foundations should be published annually, including their names and addresses?

Mr. HARDING. Mr. Chairman, we are in the process, as you know, of accumulating a national registry on electronic tape. Its publication is perhaps another problem. I am not altogether sure that this would be an economic expenditure of the public funds, to publish such a large document, including names and addresses.

The CHAIRMAN. It would be rendering a public service, of course. What is your latest estimate on the number of foundations?

Mr. HARDING. Approximately 15,000, Mr. Chairman.

The CHAIRMAN. What is that estimate based on?

Mr. HARDING. Primarily based upon the Foundation Libraries estimate.

The CHAIRMAN. That is the Foundation Library Center of New York?

Mr. HARDING. Yes, sir. We have not, as you know, an accepted definition of "foundation," which causes our difficulty in making a head count.

The CHAIRMAN. Well, I would look at that very closely. Would you agree that the tax returns of foundations should require disclosure of amount spent for instigating or promoting legislative or political activities, or amounts paid to other organizations for that purpose?

Mr. HARDING. Possibly, Mr. Chairman.

The CHAIRMAN. Would you agree that foundation tax returns should likewise require disclosure of amounts spent for television, radio, and newspaper advertising?

Mr. HARDING. Possibly, Mr. Chairman.

The CHAIRMAN. I am going to ask you, Mr. Harding, some questions involving the merger of the Delaware Steeplechase and Race Association and Delaware Park, Incorporated. If you do not know the answers, you may submit them for this hearing record.

Do you know anything about this merger?

Mr. HARDING. No, Mr. Chairman.

The CHAIRMAN. Mr. Harding, I understand that in August 1963, a corporation merger involving the Delaware Steeplechase and Race Association, the organization which conducts the Delaware Park horse racing, and a subsidiary corporation, Delaware Park, Incorporated, was effected. Are you familiar with this merger?

Mr. HARDING. No, sir, I am not.

The CHAIRMAN. At the time of this merger, it was reported that this new corporation "will be in a tax-free status granted in January 1962 by the Internal Revenue Service."

Has federal tax exempt status been granted to this new corporation and if so, from what date?



Mr. HARDING. We will supply that for the record.  
(Following is the information submitted by the IRS, under date of October 2, 1964.)

The newspaper article was misleading. Our Wilmington District Office, which was aware of this entire matter, advises the facts are:

Delaware Parks, Inc., was incorporated as a nonprofit organization on January 10, 1961. It was granted exempt status as of that date by the Wilmington District in January 1962. During the years 1962 and 1963 it was given 1,390 shares of Delaware Steeplechase and Race Association stock by various donors. At that time, Delaware Steeplechase's outstanding stock totaled 1,519 shares. Therefore, over 91 percent of Steeplechase stock was owned by Delaware Parks, Inc.

Delaware Racing Association was incorporated as a taxable corporation on September 11, 1962. It was relatively inactive until July 23, 1963, at which time the 1,390 shares of Delaware Steeplechase stock were transferred to it by Delaware Parks. Delaware Racing Association then merged Delaware Steeplechase into itself and, on the same day, issued 1,390 shares of its own stock to Delaware Parks. So actually, Delaware Parks exchanged stock of Delaware Steeplechase (a taxable corporation) for stock of Delaware Racing Association (also a taxable corporation) and, by this exchange, became sole owner of Delaware Racing Association.

Delaware Racing Association now owns the track property and operates races in that area. This corporation filed a taxable Form 1120 for its initial period, from September 11, 1962 to July 31, 1963. During this period the organization was engaged in limited activity and had no tax liability. A return for the fiscal year ended July 31, 1964, due October 15, 1964, will reflect taxable race track operations for 1964 and will, of course, be subject to examination.

The CHAIRMAN. If the merger of these two corporations took place as reported in the Wilmington, Delaware Morning News of August 2, 1963, what legal provisions authorize the IRS to grant tax exempt status retroactively to January 1962, 18 months after the merger?

Mr. HARDING. The same response, Mr. Chairman.  
(Following is the information submitted by the IRS, under date of October 2, 1964.)

Delaware Parks, Inc., was not a party to the merger of the two taxable entities (Delaware Steeplechase and Race Association, and Delaware Racing Association). Again, the newspaper article is very misleading. Delaware Parks was incorporated as a nonprofit organization on January 10, 1961, and was granted exempt status on January 26, 1962. When exempt status is granted, it is normally made retroactive to the date of incorporation.

The CHAIRMAN. Does the new corporation hold stock ownership in any other industrial or commercial enterprise such as the du Pont Company or any of its subsidiaries and if so, how much?

Mr. HARDING. Same response.

The CHAIRMAN. You will supply that to us?

Mr. HARDING. Yes, sir, to the extent that this information is available to us.

(Following is the information submitted by the IRS, under date of October 2, 1964.)

The Form 990-A return of Delaware Parks, Inc. (the exempt organization), for the calendar year 1963 lists only the 1,390 shares of Delaware Racing Association stock held, at a value of \$2,126,700. Delaware Racing Association is a taxable corporation; therefore, its stock holdings are not a matter of public record.

The CHAIRMAN. Are any officers and directors of the newly merged corporation also officers and directors of the du Pont Company or any of their subsidiaries, including the Delaware Realty Investment Company, Christiana Securities Company, or du Pont foundations such as the Longwood Foundation, Incorporated, and the Winterthur Corporation? If so who are they and on what boards do they sit?

Mr. HARDING. To the extent that it is available, we shall supply it.

(Following is the information submitted by the IRS, under date of October 2, 1964.)

Neither the Service files nor the returns of Delaware Parks, Inc. or Delaware Racing Association reflect this information.

The CHAIRMAN. Based on our studies, would you agree that the accounting practices used by foundations are diverse and totally inadequate?

Mr. HARDING. Mr. Chairman, I am sure that all organizations can improve their accounting practices. I think that the major information that I have gotten from your studies related to their activities rather than to their accounting practices, however. There have been some examples of inadequate accounting which you have pointed out, but this is not peculiar with exempt organizations.

The CHAIRMAN. So it is the activities rather than accounting?

Mr. HARDING. I think this is the general thrust of your study, Mr. Chairman.

The CHAIRMAN. Would you agree that it is important to classify foundations for policy-making purposes?

Mr. HARDING. I do not believe I understand the question, sir.

The CHAIRMAN. Would you agree that it is important to classify foundations for policy-making purposes?

Mr. HARDING. You mean foundations as distinguished from all other tax-exempt organizations?

The CHAIRMAN. No, in other words, types of foundations—classify them according to types.

Mr. HARDING. I am not sure, Mr. Chairman, that that would serve any particular tax purpose. There may be some other public purposes that would be served by such classification.

The CHAIRMAN. You do not think, then, that that is necessarily important?

Mr. HARDING. It has not been brought to my attention that this would be of value to us.

The CHAIRMAN. Are you sending out questionnaires now dealing with that subject?

Mr. HARDING. No, sir, not to my knowledge. We are getting information on the foundations.

The CHAIRMAN. For what purpose are you collecting that information, Mr. Harding?

Mr. HARDING. Well, you are referring to the Treasury survey, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. HARDING. This is for legislative purposes.

The CHAIRMAN. For legislative purposes?

Mr. HARDING. Yes, sir.

The CHAIRMAN. Has the IRS sent out questionnaires, too?

Mr. HARDING. The IRS is sending out questionnaires, Mr. Chairman, primarily for the purpose of accumulating the status of all tax-exempt organizations in order to put on electronic tape.

The CHAIRMAN. Not for purposes of classification?

Mr. HARDING. Not to my knowledge, sir.

(Following is additional information on this subject, furnished by Acting Commissioner Harding under date of September 16, 1964.)

During the months of July and August 1964 the Internal Revenue Service circulated Form M-0284 to all exempt organizations filing returns on Form 990-A. The purpose of the questionnaire was to obtain current information preparatory to converting Service records to automatic data processing. Question 9 on page 3 of the form requires exempt foundations to indicate whether they are "private" or "public". For this purpose, the instructions define a private foundation as "... one organized by an individual, a family, or a corporate or other business undertaking which is substantially supported by such parties". A public foundation is defined as "... one supported primarily by contributions from the general public or governmental bodies.

The CHAIRMAN. Would you recommend differentiation of treatment of the various classes of foundations?

Mr. HARDING. I am afraid that would be a legislative matter, Mr. Chairman.

The CHAIRMAN. Am I correct in my understanding that the Treasury has started a program to classify foundations so that it knows the number of community foundations, company-sponsored foundations, family foundations, etc.

Mr. HARDING. If this is so, Mr. Chairman, it has escaped my notice.

The CHAIRMAN. You do not have any knowledge of it?

Mr. HARDING. No, sir.

The CHAIRMAN. That is all the questions we have, Mr. Harding, but we want to confer with you gentlemen. If it is all right, we will do that down in my office, Room 1136. Will that be satisfactory?

Mr. HARDING. We shall be very pleased to.

The CHAIRMAN. Thank you very much for your attendance. Although we might continue at a later date, we will discontinue for the present—we will bring this session to an end.

Thank you very much.

Mr. HARDING. It was a very educational experience for the Internal Revenue Service.

Mr. CHAIRMAN. And you have been very helpful. Thank you, sir.

(Whereupon at 2:25 p.m., September 4, 1964, the subcommittee was adjourned.)

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**EXHIBITS**

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**Exhibit 1**  
**CARNEGIE CORPORATION OF NEW YORK, NEW YORK CITY**

*Compensation of Officers (fiscal year ending Sept. 30, 1963)*

Name	Position	Salary	Time devoted to position, months	
John W. Gardner	President	\$50,000	12	
James A. Perkins	Vice President	33,333	10	Resigned.
Alan Pifer	do	25,000	12	
Florence Anderson	Secretary	20,000	12	
James W. Campbell	Treasurer	18,000	12	
Stephen N. Stackpole	Executive Associate	18,500	12	
William W. Marvel	do	1,625	1	Resigned.
Frederick H. Jackson	do	18,875	12	
Lloyd N. Morrisett	do	17,500	12	
Peter Caws	do	13,417	12	
Arthur L. Singer, Jr.	do	5,833	4	New employee.
Margaret E. Mahoney	Associate Secretary	14,500	12	
Helen Rowan	Editor	7,000	6	Half time.
Frederic A. Mosher	Executive Associate	10,500	12	
		254,083		

## Exhibit 2

## THE COMMONWEALTH FUND, NEW YORK CITY

Compensation of Officers, Etc. (fiscal year ending June 30, 1963)

Name	Position	Time devoted to position (percent)	Salary	Expense and travel account allowance	Total
M. P. Aldrich	President	100	\$36,000.00	\$2,204.59	\$38,204.59
R. Heffron, M.D.	Medical Associate	100	22,000.00	252.76	22,252.76
L. V. Hammond	Director, Division International Fellowships	100	17,500.00	6,052.42	23,552.42
R. A. Crane	Recording Secretary, Director, Division Publications	100	17,000.00	29.42	17,029.42
S. G. Putt	Warden, Harkness House, London	100	10,171.33	4,345.48	14,516.81
J. W. Wooster, Jr.	Associate	100	4,333.33	17.45	4,350.78
			107,004.66	12,902.12	119,906.78

**Exhibit 3**

**DUKE ENDOWMENT, CHARLOTTE, NORTH CAROLINA**

*Compensation of Officers, Etc. (1963)*

Trustees:

Fees paid in accordance with the terms of the  
Trust Indenture and at the rate stated therein:

Norman A. Cocke.....	\$29,911.56
Wilburt C. Davison.....	29,911.56
Doris Duke.....	29,911.56
Benjamin F. Few.....	29,911.56
Bennette E. Geer.....	29,911.56
Philip B. Heartt.....	29,911.56
Thomas F. Hill.....	29,911.56
Amos R. Kearns.....	29,911.56
Thomas L. Perkins.....	29,911.56
Marshall I. Pickens.....	29,911.56
R. Grady Rankin.....	29,911.56
Watson S. Rankin.....	29,911.56
William S. O'B. Robinson, Jr.....	29,911.56
Mary D. B. T. Semans.....	29,911.56
Kenneth C. Towe.....	29,911.56

\$448,673.40

Officers—All of whom are full-time employees:

Marshall I. Pickens, Secretary.....	36,000.00
Richard B. Henney, Treasurer.....	20,333.33
James R. Felts, Jr., Assistant Secretary.....	16,437.82
Catherine D. Horrigan, Assistant Secretary.....	8,756.41
John H. Bockmann, Assistant Treasurer.....	15,891.02
John F. Day, Assistant Treasurer.....	13,621.79

111,040.37

559,713.77

299

**Exhibit 4**

**ALFRED P. SLOAN FOUNDATION, NEW YORK CITY**

*Compensation of Officers, Etc. (1963)*

	<i>Compensation</i>	<i>Expense allowance</i>
Everett N. Case, President, Full time-----	\$46,731	\$1,799
Arnold J. Zurcher, Executive Director and Vice-President— Full time-----	37,917	3,226
Larkin H. Farinholt, Vice President—Full time-----	26,000	4,634
Warren Weaver, Vice President—Part time-----	20,000	3,032
James F. Kenney, Secretary and Treasurer—Full time----	27,083	None
Claire S. Armstrong, Assistant Treasurer—Full time-----	13,542	None
Muriel Gaines, Assistant Secretary—Full time-----	10,833	None
Total-----	182,106	12,691

**300**



**Exhibit 5**

**ROCKEFELLER BROTHERS FUND, INC., NEW YORK CITY**

*Compensation of Officers, Etc. (1963)*

	<i>Time devoted to position</i>	<i>Salary</i>
Dana S. Creel, Director.....	Portion---	\$25, 000
John E. Lockwood, Counsel.....	--do-----	10, 000
Robert C. Bates, Secretary.....	--do-----	14, 000
Daniel M. Brosnan, Assistant Treasurer.....	--do-----	11, 500
Total.....		<u>60, 500</u>

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## Exhibit 6

## LEONARD C. HANNA, JR., FUND, CLEVELAND, OHIO

## Compensation of Officers and Trustees

<i>Officer or trustee</i>	<i>Period (fiscal years ending)</i>	<i>Compensation</i>	<i>Time spent</i>
John C. Virden, Trustee-----	Sept. 1, 1958, through Aug. 31, 1962.	\$161, 643. 43	Part time.
	Sept. 1, 1962, through Jan. 18, 1963.	( <sup>1</sup> )	Do.
Harold T. Clark, President and Trustee.	Sept. 1, 1958, through Aug. 31, 1962.	201, 393. 43	Do.
	Sept. 1, 1962, through Jan. 18, 1963.	( <sup>1</sup> )	Do.
Lewis B. Williams, Vice President, Treasurer and Trustee.	Sept. 1, 1958, through Aug. 31, 1962.	207, 893. 43	Do.
	Sept. 1, 1962, through Jan. 18, 1963.	( <sup>1</sup> )	Do.
M. J. Reigert, Secretary and Assistant Treasurer.	Sept. 1, 1958, through Aug. 31, 1962.	38, 661. 66	Do.
	Sept. 1, 1962, through Aug. 18, 1963.	( <sup>1</sup> )	Do.
Compensation for period of 9/1/62-1/18/63-----		609, 591. 95 <sup>1</sup> 103, 395. 00	
Total-----		712, 986. 95	

<sup>1</sup> This is the period of final liquidation of the Hanna Fund. Although the Fund filed a tax return for this period, it failed to report details of compensation of officers and trustees. Such details, which are required by Treasury regulations, include the name of the officer or trustee, position, time devoted to position, salary, and expense account allowance. Nor have we as yet received such details from the Fund despite three requests, the first one dated January 25, 1964.

The tax return for the period of September 1, 1962, through January 18, 1963, indicates that \$103,395 was paid to officers and trustees during this short period of 4½ months.

Exhibit 7

**THE ROBERT A. WELCH FOUNDATION, HOUSTON, TEXAS**

*Compensation of Officers, Directors, Trustees, Etc. (fiscal year ending August 31, 1962)*

<i>Name</i>	<i>Position</i>	<i>Time devoted to business</i>	<i>Compensation</i>
Daniel R. Bullard---	Trustee and President-----	Part-----	\$20,800.00
Wilfred T. Doherty--	Trustee and Vice-President----	--do-----	20,800.00
Jesse Andrews-----	-----do-----	--do-----	6,250.00
Lester Settegast-----	Trustee-----	--do-----	15,600.00
Roger J. Wolfe-----	-----do-----	--do-----	4,239.00
Robert E. Wise-----	Secretary and Treasurer-----	--do-----	5,720.00

73,409.00

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**Exhibit 8**

**LILLY ENDOWMENT, INCORPORATED, INDIANAPOLIS,  
INDIANA**

*Compensation of Officers (1963)*

<i>Name</i>	<i>Position</i>	<i>Time devoted</i>	<i>Compensation</i>
John S. Lynn-----	Secretary, General Manager-- Director for Community Serv- ices.	Entire---	\$30, 000. 00
G. Harold Duling-----	Director for Religion-----	--do-----	18, 149. 94
Kenneth S. Templeton, Jr.	Director for Education-----	--do-----	18, 749. 94
Total-----			66, 899. 88

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## Exhibit 9

## THE FORD FOUNDATION, NEW YORK CITY

Compensation of Officers, Etc., for the Year Ended September 30, 1963

Name	Position	Time devoted to position, percent	Amount	Travel expenses	Conference and meeting expenses
James M. Nicely	Vice president and treasurer	100	\$56,000	\$3,992.70	\$555.27
John E. Granger	Assistant treasurer	100	21,000	4,635.17	222.75
Thomas H. Lenagh	do	100	20,000	1,034.02	403.91
Henry T. Heald	President	100	75,000	2,215.36	4,024.60
F. F. Hill	Vice president	100	45,000	1,891.83	303.60
William McPeak	do	100	45,000	2,302.79	55.53
Clarence H. Faust	Deputy vice president <sup>1</sup>	100	50,000	653.13	485.32
F. Champion Ward	Secretary	100	20,000	3,646.33	81.34
Joseph M. McDaniel, Jr.	Chairman of the board	100	35,000	120.85	1,389.30
John J. McCloy	Vice chairman	Part	25,000	5,891.71	5,000.00
Donald K. David	Assistant comptroller	100	17,000	531.23	200.00
Leonard R. Leighton	Assistant secretary	100	17,000	802.48	486.40
William H. Nims	do	100	21,500	430.40	415.11
Robert C. Schmid	Vice President <sup>2</sup>	100	10,000	---	456.20
Dyke Brown	Trustee	Part	5,000	---	---
Donald K. David	do	Part	5,000	---	---
John Cowles	do	Part	5,000	---	---
Mark F. Ethredge	do	Part	5,000	---	---
Benson Ford	do	Part	5,000	---	---
Henry Ford II	do	Part	5,000	---	---
Laurence M. Gould	do	100	5,000	---	---
Henry T. Heald	do	Part	5,000	---	---
Roy E. Larson	do	Part	5,000	---	---
John J. McCloy	do	Part	5,000	---	---
Julius A. Stratton	do	Part	5,000	---	---
Charles E. Wyzanski	do	Part	5,000	---	---
Stephen D. Bechtel	do	Part	5,000	---	---
J. Irwin Miller	do	Part	5,000	---	---
Bethuel M. Webster	do	Part	3,750	---	---
Eugene R. Black	do	Part	26,000	105.65	191.46
Stanley W. Gregory	Comptroller	100	577,250	28,313.65	14,270.79

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<sup>1</sup> Period April 1, 1963-September 30, 1963.  
<sup>2</sup> Period October 1, 1962-December 31, 1962.

**Exhibit 10**  
**THE ROCKEFELLER FOUNDATION, NEW YORK CITY**  
*Compensation of Officers, Etc.—Year 1963*

(Note: No trustee or officer of the Foundation is related by blood, marriage, adoption or employment to any person who has made a substantial contribution to the Foundation, or to a corporation controlled by such contributor, except that John D. Rockefeller, III, is a grandson of John D. Rockefeller, Sr., the founder of and principal contributor to the Foundation.)

<i>Trustees:</i>	<i>Name</i>	<i>Position</i>	<i>Time devoted to position<sup>1</sup></i>	<i>Salary</i>
	Barry Bingham		As required	None
	Lloyd D. Brace		do	do
	Ralph J. Bunche		do	do
	Lowell T. Coggeshall		do	do
	John S. Diekey		do	do
	Lee A. Dubridge		do	do
	Oliver S. Franks		do	do
	Robert F. Goheen		do	do
	Clifford M. Hardin		do	do
	J. George Harrar		do	do
	Theodore M. Hesburgh		do	do
	Arthur A. Houghton, Jr.		do	do
	Clark Kerr		do	do
	John R. Kimberly		do	do
	John D. Rockefeller III		do	do
	Frank Stanton		do	do
	Thomas J. Watson, Jr.		do	do
	W. Barry Wood, Jr.		do	do
	George D. Woods		do	do
	Also:			
	Detlev W. Bronk	Retired June 30, 1963	do	do
	Henry P. Van Dusen	do	do	do
	Orvil E. Dryfoos	Deceased May 25, 1963	do	do

<i>Officers</i> (See supplementary schedule attached):			
J. George Harrar	President	96.00%	\$48,000.00
K. W. Thompson	Vice President and Acting Director, Humanities and Social Sciences		33,750.00
K. Wernimont	Vice President for Administration and Treasurer	99.85%	23,712.50
Flora M. Rhind	Secretary	Indeterminate	24,750.00
Rowe S. Steel	Comptroller	95.45%	21,000.00
Robert S. Morison	Director for Medical and Natural Sciences		28,250.00
Albert H. Moseman	Director for Agricultural Sciences		25,750.00
Janet M. Paine	Assistant Secretary	93.16%	13,625.00
J. Kellum Smith, Jr.	Assistant Secretary and Assistant to the President		15,750.00
Theodore R. Frye	Assistant Treasurer	99.05%	11,700.00
J. H. Greenfield	Assistant Comptroller	92.66%	12,625.00
John H. Grevers	Assistant Comptroller and Chief Accountant		14,375.00
Edward Robinson	Special Assistant to the President	99.90%	21,979.17
John C. Bugher*	Consultant		23,000.00
<i>Medical and Natural Sciences:</i>			
Richmond K. Anderson	Associate Director		21,000.00
Virginia Arnold	do		15,750.00
Wilbur G. Downs	do		21,500.00
Lucien A. Gregg	do		21,500.00
Henry W. Kunin	do		17,416.66
John Maier	do		21,750.00
Gerard R. Pomerat	do		21,750.00
Virgil C. Scott	do		21,750.00
Max Theiler	do		22,750.00
Robert B. Watson*	do		21,750.00
John M. Weir	do		24,750.00
LeRoy R. Allen*	do		15,750.00
Guy S. Hayes*	do		17,000.00
Oster L. Peterson	do		18,750.00

\* Full time unless otherwise indicated.

## Exhibit 10

## THE ROCKEFELLER FOUNDATION, NEW YORK CITY

## Compensation of Officers, Etc.—Year 1963—Continued

(Note: No trustee or officer of the Foundation is related by blood, marriage, adoption or employment to any person who has made a substantial contribution to the Foundation, or to a corporation controlled by such contributor, except that John D. Rockefeller III. is a grandson of John D. Rockefeller, Sr., the founder of and principal contributor to the Foundation.)

Name	Position	Time devoted to position <sup>1</sup>	Salary
<i>Humanities and Social Sciences:</i>			
Leland C. DeVinney	Deputy Director	---	\$22,000.00
Chadbourne Gilpatric	Associate Director	---	21,000.00
R. K. Davidson*	do	---	20,000.00
Charles M. Hardin	do	---	19,500.00
John Marshall	do	---	19,750.00
B. R. Compton	Assistant Director	---	14,000.00
R. W. Crawford	do	---	15,500.00
Gerald Freund	do	---	15,875.00
Robert W. Joly*	do	---	15,000.00
Robert L. West*	do	---	3,070.83
<i>Agricultural Sciences:</i>			
Norman E. Borlaug*	Associate Director	---	16,125.00
Robert F. Chandler*	do	---	20,750.00
R. W. Cummings*	do	---	20,125.00
Ulysses J. Grant*	do	---	15,750.00
John J. McKelvey	do	---	18,750.00
Dorothy Parker	do	---	15,750.00
Lewis M. Roberts	do	---	18,500.00
J. A. Rupert*	do	---	14,750.00
F. J. Wellhausen*	do	---	17,750.00
R. D. Osler	Assistant Director	---	16,750.00
Jesse P. Perry	do	---	15,750.00
R. W. Richardson	do	---	16,750.00
			\$974,629.16



<i>*Overseas Service Allowances:</i>				
LeRoy R. Allen	-----	-----	-----	8,876.80
Norman E. Borlaug	-----	-----	-----	6,743.74
John C. Bugher	-----	-----	-----	4,703.97
Robert F. Chandler	-----	-----	-----	4,978.87
Ralph W. Cummings	-----	-----	-----	5,527.69
R. K. Davidson	-----	-----	-----	1,920.55
Ulysses J. Grant	-----	-----	-----	4,689.24
Guy S. Hayes	-----	-----	-----	7,338.23
Robert W. July	-----	-----	-----	1,803.77
J. A. Rupert	-----	-----	-----	4,180.08
R. B. Watson	-----	-----	-----	268.33
E. J. Wellhausen	-----	-----	-----	4,485.47
R. L. West	-----	-----	-----	556.11
				56,072.85
<i>Expense Allowances—No Ac-</i>				
<i>counting to Employer:</i>				
Robert S. Morison	-----	-----	-----	1,000.00
Albert H. Moseman	-----	-----	-----	1,000.00
				2,000.00
				\$1,032,702.01

1 Full time unless otherwise indicated.

## Exhibit 11

W. K. KELLOGG FOUNDATION, BATTLE CREEK,  
MICHIGAN

Compensation of officers, year ended August 31, 1963

Name	Title	Time devoted to position	Honoraria	Salary	Expense account allowance <sup>1</sup>
<b>Officers:</b>					
Emory W. Morris	President and General Director.	90%	-----	<sup>13</sup> \$70, 000	\$3, 490
Glenn A. Cross	Vice President	( <sup>3</sup> )	-----	-----	-----
Leonard L. White	Secretary and Assistant Treasurer.	100%	-----	<sup>14</sup> 15, 250	764
Orville L. DeBolt	Treasurer and Assistant Secretary.	100%	-----	<sup>15</sup> 15, 450	787
<b>Directors</b> None.					
<b>Trustees:</b>					
Philip E. Black- erby.	-----	( <sup>2</sup> )	\$120	<sup>4</sup> <sup>15</sup> 24, 500	1, 710
W. P. Butler*	-----	( <sup>2</sup> )	80	-----	-----
Glenn A. Cross	-----	( <sup>3</sup> )	120	-----	-----
Neva M. Kaga- master.*	-----	( <sup>2</sup> )	40	<sup>5</sup> <sup>15</sup> 11, 688	-----
Matthew R. Kinde.*	-----	( <sup>2</sup> )	80	<sup>6</sup> <sup>15</sup> 21, 250	-----
Emory W. Morris	-----	( <sup>2</sup> )	0	-----	-----
Richard E. Pritchard.*	-----	( <sup>2</sup> )	20	-----	-----
Lyle C. Roll	-----	( <sup>2</sup> )	110	-----	-----
John O. Snook	-----	( <sup>2</sup> )	120	( <sup>7</sup> )	-----
E. Gifford Up- john.*	-----	( <sup>2</sup> )	40	( <sup>8</sup> )	20
Henry F. Vaughan.	-----	( <sup>2</sup> )	110	( <sup>9</sup> )	198
Bessie Rogers Young.*	-----	( <sup>2</sup> )	10	-----	-----
Kenneth V. Zwiencr.	-----	( <sup>2</sup> )	90	( <sup>10</sup> )	-----
<b>Finance Committee:</b>					
Glenn A. Cross	Chairman	( <sup>3</sup> )	-----	-----	160
Orville L. DeBolt	Secretary	( <sup>11</sup> )	-----	-----	-----
Emory W. Morris	Member	( <sup>11</sup> )	-----	-----	-----
Richard E. Pritchard.*	Member	( <sup>12</sup> )	-----	( <sup>10</sup> )	-----
Lyle C. Roll	Member	( <sup>12</sup> )	-----	-----	64
John O. Snook*	Member	( <sup>11</sup> )	-----	-----	141
			940	158, 138	7, 334
				940	
				159, 078	

See footnotes on following page.

\*Mr. Butler died May 27, 1963.  
Miss Kagamaster elected an Honorary Trustee for one year through December 17, 1962.  
Dr. Kinde elected an Honorary Trustee for one year through December 16, 1963.  
Mr. Pritchard died November 13, 1962.  
Mr. Snook appointed December 17, 1962.  
Dr. Upjohn appointed a Trustee May 20, 1963.  
Mrs. Young is an Honorary Trustee.

<sup>1</sup> The Foundation does not provide "Expense Account Allowances." Instead, it reimburses for actual expenses incurred in connection with necessary and approved travel providing such expenses are considered by the Foundation's General Director and the Foundation's Controller to be reasonable. Expenses listed are thus "reimbursed expenses" rather than "allowances."

<sup>2</sup> The Trustees met in Battle Creek twelve times, namely the third Monday of each month. Approximately one week prior to each meeting the Secretary of the Foundation mailed to each Trustee extensive reports for review prior to the meeting. These comprised by-monthly and annual reports of the officers of the Foundation, an annual report on each program and project being assisted by the Foundation during the year, bi-monthly requests for new appropriations, and annual requests for appropriations and approval of payments on activities projected for the ensuing fiscal year. Each month it is necessary for each Trustee to devote several hours to the review of these materials in order to exercise proper judgment on matters to be considered by the Trustees at each of their meetings. Advance preparation, travel and the meeting, itself, would consume two to three days monthly, or 24 to 36 days per year.

<sup>3</sup> Mr. Cross is a Trustee, Vice President, and Chairman of the Finance Committee of the W. K. Kellogg Foundation. He is also a Co-Trustee of the W. K. Kellogg Foundation Trust. It is estimated that he devotes approximately 10% of his time to the assumption of these several responsibilities in behalf of the Foundation and the Trust.

<sup>4</sup> \$24,500 paid to Dr. Blackerby as Associate General Director of the Foundation and as Director of the Foundation's Division of Dentistry. Dr. Blackerby devotes 100% of his time as an employee including his Trusteeship.

<sup>5</sup> \$11,688 paid to Miss Kagamaster as Controller of the Foundation. Miss Kagamaster was a full-time Foundation employee until her retirement on July 31, 1963.

<sup>6</sup> \$21,250 paid to Dr. Kinde who, as a full-time employee, is Director of the Foundation's Division of Medicine and Public Health.

<sup>7</sup> Mr. Snook is also retained as the Foundation's legal counsel. \$3,500 was paid in fees and \$342.28 for travel and expenses for legal services of the firm of Cannon, Dillon, Snook & Morton, of which Mr. Snook is senior partner.

<sup>8</sup> \$360 was paid as a consultant to the Foundation's General Director.

<sup>9</sup> \$1,440 was paid as a consultant to the Foundation's Division of Medicine and Public Health.

<sup>10</sup> \$810 was paid as a financial consultant and for investment counsel.

<sup>11</sup> This function is considered a part of Mr. DeBolt's responsibilities as Treasurer of the Foundation, Dr. Morris' responsibilities as President and General Director and Mr. Snook's responsibilities as the Foundation's legal counsel.

<sup>12</sup> Four one-day meetings of the Finance Committee were held during the year. Innumerable telephone conferences were held to consider investment purchases and sales.

<sup>13</sup> Plus 7% of salary contributed to retirement-savings fund and \$55,000 to a reserve fund for retirement.

<sup>14</sup> Plus 5% of salary contributed to retirement-savings fund.

<sup>15</sup> Plus 7% of salary contributed to retirement-savings fund.

<sup>16</sup> \$180 was paid as a financial consultant and for investment counsel.

**Exhibit 12**

U.S. TREASURY DEPARTMENT,  
COMMISSIONER OF INTERNAL REVENUE,  
*Washington, D.C., December 3, 1964.*

Honorable WRIGHT PATMAN,  
*Chairman, Subcommittee Foundation Study, Select Committee on  
Small Business, Room 1136, House Office Building, Washing-  
ton, D.C.*

DEAR MR. PATMAN: At our meeting in your office on November 19, you asked to be advised as to the anticipated completion dates of Service audits of the Baird and Lansing Foundations, the J. M. Kaplan Fund, Inc., and the Leonard C. Hanna, Jr., Fund.

We have reviewed the status of these audits with our field offices and, in light of the remaining work to be done, we anticipate completion as follows:

- |                                       |               |
|---------------------------------------|---------------|
| 1. Baird and Lansing Foundations----- | June 30, 1965 |
| 2. J. M. Kaplan Fund, Inc.-----       | July 31, 1965 |
| 3. Leonard C. Hanna, Jr., Fund-----   | Feb. 28, 1965 |

It should be understood that the above dates refer only to completion of the field audit work.

As you know, these cases involve a substantial number of complex transactions, covering a number of years. Further, because of the interrelation of individuals and corporations, the returns of certain other taxpayers are under examination. For example, the Baird-Lansing inquiry alone now covers the activities of some 20 separate entities.

Accordingly, in light of the procedural rules for dealing with issues raised in the audit of returns, including rights of appeal available to these organizations and related taxpayers, final determinations as to the status of these cases will be considerably beyond the dates listed for completion of the field audits. I do not believe it would serve any useful purpose at this time to venture, even an estimate, as to these dates.

Every effort is being made, however, to expedite conclusion of the Service's examinations. The audits are being carried out by teams of experienced Internal Revenue agents, working under the direction of team captains carefully selected for their knowledge in these specialized areas of tax law administration. The District Directors responsible are actively following the day-to-day progress being made. Status reports are being furnished the National Office on a monthly basis and are being carefully evaluated here, and we are consulting with field officials where this appears necessary or desirable.

Please be assured these efforts will continue until these cases are effectively concluded.

Sincerely,

BERTRAND M. HARDING,  
*Acting Commissioner.*

## Exhibit 13

## SCHEDULE 1

HOUSE SMALL BUSINESS COMMITTEE STUDY OF FOUNDATION  
LOANS RECEIVABLE AND PAYABLE

Foundation (Name and address):  
The J. M. Kaplan Fund, Inc.  
55 Fifth Avenue Avenue  
New York 3, New York

Loans receivable, excluding Government obligations, during the years  
1951 through 1962 (please print or type data)

(1) Debtor (Name and address)	(2) Purpose for which each loan was used by debtor	(3) Secured by note		(4) Date made	(5) Face amount	(6) Interest rate	(7) Due date	(8) Date paid in full	(9) Collateral pledged for each loan
		Yes	No						
J. M. Kaplan, 55 Fifth Avenue, New York 3, New York.	A contribution by Navajo Cor- poration, the payee.	x		12/26/44	**\$720,000.00		On death of J. M. Kaplan.		None.
Kenneth B. & Susan H. Webb, Woodstock, Vermont.	To operate a camp.	x		11/ 5/47	\$11,000.00	5%	\$880 on 11/1 of each yr.	11/2/52	Mortgage on camp property.
Diana Ross, 105 West 38th Street, New York 18, New York.		x		11/19/51	\$1,000.00	0	On demand.	11/24/52	None.
J. M. Kaplan, 55 Fifth Avenue, New York 3, New York.	A contribution by Jernkap, Inc., the payee.	x		5/25/53	**\$907,000.00	0	On death of J. M. Kaplan.	(*)	None.
Etched Products Co., 39-01 Queens Boulevard, Long Island City, New York.	Business purposes.	x		12/17/53	\$400,000.00	5%			Mortgages on real estate and factory equipment.
Theodore D. Nierenberg as Execu- tor of Estate of Albert Nieren- berg, 8 Pine Tree Drive, Great Neck, Long Island, N.Y.			x	2/23/54	\$37,428.74	0		12/29/54	None.
Same			x	1/19/55	\$6,514.92			2/14/55	None.
Theodore Nierenberg			x	2/23/54	\$6,680.51			12/29/54	None.
Do.			x	1/19/55	\$1,753.24			2/14/55	None.
Felice T. Schwartz.			x	2/23/54	\$6,541.55			12/29/55	None.

## SCHEDULE 1--Continued

HOUSE SMALL BUSINESS COMMITTEE STUDY OF FOUNDATION  
LOANS RECEIVABLE AND PAYABLEFoundation (Name and address):  
The J. M. Kaplan Fund, Inc.  
55 Fifth Avenue Avenue  
New York 3, New YorkLoans receivable, excluding Government obligations, during the years  
1951 through 1962 (please print or type data)

(1) Debtor (Name and address)	(2) Purpose for which each loan was used by debtor	(3) Secured by note		(4) Date made	(5) Face amount	(6) Interest rate	(7) Due date	(8) Date paid in full	(9) Collateral pledged for each loan
		Yes	No						
Felice T. Schwartz 3950 Winding Road, Cincinnati 29, Ohio.			x	1/19/55	\$1,726.84			2/14/55	None.
Heller-Sperry, Inc., 411 Fifth Ave- nue, New York 16, New York.	Working capital.		x	2/25/54	\$50,000.00	6%	On demand	9/20/56 by Trans- fer to Jenkap, Inc.	None.
New School for Social Research, 66 W. 12th Street, New York 11, New York.	Purchase of 2500 shares of Min- nesota and Ontario @ \$60 per share.		x	5/11/55	\$150,000.00	0	Payable out of contributions to Bldg. fund.	7/31/56	The securities in Col. 2.
Sally Horowitz, 2 West 67th Street, New York, New York.	Purchase of 100 shares of Beau- mit Mills.		x	6/13/55	\$2,829.00	0		2/23/56	
Welch Plants Corporation.	Liquidation of Welch Plants Corp.		x	7/30/56	\$2,595,987.05	1 3/4%	9/1/63	12/5/59	Mortgage on Real Es- tate and Equipments.
Do.	do.		x	8/31/56	\$5,548,377.00	1 3/4%	9/1/63	12/5/59	
Westfield, New York.	do.		x	9/1/56	\$271,545.68	1 3/4%	9/1/63	12/5/59	
New School for Social Research, 66 West 12th Street, New York 11, New York.	To continue with building pro- gram.		x	11/5/58 12/3/58	\$100,000.00 \$100,000.00	0 0	On demand	7/21/60	

Pacific Foundation, 22-07 Slatrud Avenue, Berkeley 4, California.	(2) Acquisition & promotion of a radio station.	x	1/22/60	\$10,000.00	0	6/28/62	6/14/61	None.
New School for Social Research, 66 W. 12th Street, New York 8, New York.	(3) For investment in Real Estate.	x	12/28/60	\$75,000.00				
Hudson Guild, 438 West 27th Street, New York 1, New York.	(3) None-profit middle income housing project.	x	4/20/61	\$10,000.00				
Lenox Hill Neighborhood Assoc., 331 East 70th Street, New York City, New York.	(3) None-profit middle income housing project.	x	5/31/61 3/28/62	\$6,000.00 \$9,000.00				
New School for Social Research, 66 W. 12th Street, New York 11, New York.	(3) To purchase 5900 shares of Glen Alden Stock.	x	10/31/61	\$77,223.74			Securities transferred to fund 12/31/62.	5,900 Glen Alden.
Sherry Malkin, N.Y.C. Washington Square Col., New York, New York.	Tuition fee at New York Univ..	x	1/19/62	\$700.00		\$5 per week.		

\*\$75,000 remains open at this date.

\*\*These represented notes payable to Navajo Corporation & Jenkap, Inc., respectively which these corporations donated to the J. M. Kaplan Fund, Inc.

† Received as distribution in liquidation on liquidation of Old Welch Company, Inc. in which the J. M. Kaplan Fund, Inc. held stock.

## Exhibit 14

## SCHEDULE 2

Foundation (Name and address): HOUSE SMALL BUSINESS COMMITTEE STUDY OF FOUNDATION  
The J. M. Kaplan Fund, Inc.  
55 Fifth Avenue  
New York 3, New York

LOANS RECEIVABLE AND PAYABLE

Loans payable during the years 1951 through 1962 (please print or type data)

(1) Creditor (Name and address)	(2) Purpose for which each loan was used by foundation	(3) Secured by note		(4) Date made	(5) Face amount	(6) Interest rate	(7) Due date	(8) Date paid in full	(9) Collateral pledged for each loan
		Yes	No						
Hershey Trust Company, Hershey, Pennsylvania.	This has a mortgage subject to which real property at 675-6th Ave., N.Y.C. was donated to the J. M. Kaplan Fund, Inc. To purchase bonds as investment <sup>1</sup>	x		8/25/49	\$800,000.00 \$700,000.00	5%	11/31/57 Extended to 12/31/62	7/21/60 (date of sale of property)	Mortgage on property at 675-6th Avenue, New York City. Securities.
Bankers Trust Co. of New York, 16 Wall Street, New York 5, New York.	do.			11/22/54	\$200,000.00	3 3/4%	11/22/55	11/22/55 by renewal	
do.	do.			12/2/54	\$100,000.00				
do.	do.			12/6/54	\$300,000.00				
do.	do.			12/8/54	\$300,000.00				
do.	do.			12/9/54	\$100,000.00				
do.	do.			12/13/54	\$100,000.00				
do.	do.			12/14/54	\$100,000.00				
do.	do.			12/16/54	\$100,000.00				
do.	Renewals <sup>1</sup>		x	11/22/55	\$1,200,000.00	3 1/2%	5/22/56	5/22/56 by renewal	
do.	do <sup>1</sup>			5/22/56	\$1,200,000.00	3 1/2%	8/22/56	8/22/56 by renewal	
do.	do <sup>1</sup>			8/22/56	\$1,200,000.00	3 1/2%	11/21/56	11/21/56 by renewal	
do.	do <sup>1</sup>			11/21/56	\$1,200,000.00	4%	2/21/57	2/21/57 by renewal	
do.	do <sup>1</sup>			2/21/57	\$1,200,000.00	4%	5/21/57	5/21/57	
do.	do <sup>1</sup>			12/29/55	\$100,000.00	3 3/4%	Renewed monthly	9/29/56	Securities.
do.	do.	x		2/6/56	\$100,000.00	3 3/4%	do.	6/6/56	do.
do.	To pay other debts.	x		8/30/56	\$3,000,000.00	4%	9/10/56	9/10/56	\$1,000,000.00.
do.	For purchase of Old Welch shares.	x		8/25/55	\$5,138,433.00		2/25/56	2/25/56	\$3,138,433.00.
do.		x					8/25/56	8/25/56	
do.							Transferred to Jenkap Dec. 1956.		
Carl M. Loeb Rhodes Company, 42 Wall Street, New York 5, New York.	To pay other indebtedness.		x	12/19/56	\$658,000.00	6%		1/30/57	138,575 Minnesota Ontario Paper.
Bankers Trust Co. of New York, 16 Wall Street, New York 5.	Loan subject to which life insurance policies were received as contributions.		x	7/31/57	\$65,000.00	4%	7/31/57		Life insurance policies on the life of J. M. Kaplan.



Foundation (Name and address): HOUSE SMALL BUSINESS COMMITTEE STUDY OF FOUNDATION  
 The J. M. Kaplan Fund, Inc.  
 55 Fifth Avenue  
 New York 3, New York  
 LOANS RECEIVABLE AND PAYABLE  
 Loans payable, during the years 1951 through 1962  
 (please print or type data)

(1) Creditor (Name and address)	(2) Purpose for which each loan was used by foundation	(3) Secured by note		(4) Date made	(5) Face amount	(6) Interest rate	(7) Due date	(8) Date paid in full	(9) Collateral pledged for each loan
		Yes	No						
Goldman, Sachs & Company	To purchase securities	X		4/1/59	\$500,000.00	4 1/8%	On demand	4/8/59	\$500,000 Niagara Mohawk 4 1/8% conv. Deb. due 2/1/72. Securities.
Bankers Trust Co., of New York, 16 Wall Street, New York 3, New York.	do.	X		6/12/59	\$500,000.00	4 1/2%	do.	7/2/59	Do.
Bankers Trust Co., of New York, 16 Wall Street, New York 3, New York.	do.	X		4/16/62	\$750,000.00	4 1/2%	7/16/62	5/28/62	Do.

**Exhibit 15**

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
DISTRICT DIRECTOR,  
*New York, N.Y., March 29, 1957.*

Via registered mail.

J. M. KAPLAN FUND, INC.  
55 Fifth Avenue,  
New York, N.Y.

(Attention: Mr. J. M. Kaplan, President).

GENTLEMEN: An examination of the activities of your organization as disclosed by Forms 990-A filed by your organization for the calendar years 1947, 1949, 1950, 1951, 1952, 1953, 1954, 1955 and a detailed examination of the books, minutes, correspondence and other related data for the year 1953 discloses the following:

I. The J. M. Kaplan Fund, Inc. was organized on December 26, 1944, under the laws of the State of Delaware as a non-profit Membership Corporation for the purpose of receiving contributions and making donations to charitable and educational organizations.

Income tax exemption was granted to the Fund as a charitable and educational organization under section 101(6) of the 1939 Code by Commissioner's letter dated June 6, 1946.

II. The following substantial contributions were made to the Fund in the years under examination:

1944-1945-----	\$1, 015, 312. 50
1949-----	435, 000. 00
1953-----	984, 001. 00

(a) On December 26, 1944, and during the first year of the Fund's operation there was donated by the National Grape Corporation (a wholly owned company of Mr. J. M. Kaplan), the following:

Promissory Note of Mr. J. M. Kaplan-----	\$720, 000. 00
Book value of 17,500 shares of common stock of Vertientes Cavlaquery Sugar Company-----	45, 517. 50
Appreciated value of above-----	249, 795. 00
	<hr/>
	\$1, 015, 312. 50

The note of \$720,000 is unsecured and bears the signature of Mr. Kaplan, as maker. The note was issued for money advanced to Mr. Kaplan by and was payable to the order of National Grape Corporation. On December 26, 1944 the note was contributed to the J. M. Kaplan Fund, Inc.

The instrument is non-interest bearing, has no date of maturity, and is payable upon the death of Mr. Kaplan. The contribution of the note to the J. M. Kaplan Fund, Inc. was made to the Fund subject to the following conditions:

(1) The note is to revert to National Grape Corporation (see letter of National Grape Corporation dated December 26, 1944) in the event that upon the death of Mr. Kaplan his net estate, after the payment of all debts, taxes, funeral expenses, expenses of administration, and after the deduction of the value of all residences and personal and household effects and all debts owing to him by his relatives does not equal or exceed the sum of \$2,100,000.

(2) The note is to be held until the death of Mr. Kaplan, and thereafter until same shall be paid, and shall not be assigned or transferred without the consent of National Grape Corporation.

As at March 1, 1945, National Grape Corporation was succeeded by Navajo Corporation, (as a result of a non-taxable reorganization), and the assets and liabilities were transferred to the latter corporation. National Grape reflected a deficit of \$1,113,282.65 at that time. Included in the deficit was the charge against surplus of \$720,000 arising from the transfer of the note by National Grape to the J. M. Kaplan Fund, Inc. No deduction was claimed or allowed for the contribution of the note.

At the end of the fiscal year, February 28, 1945, by virtue of the transfer of the promissory note, the books and records of the National Grape Corporation indicated that Mr. Kaplan did not owe the corporation anything.

(b) On August 25, 1949, Navajo Corporation (successor of National Grape Corporation) donated real estate located at 675 Sixth Avenue to the J. M. Kaplan Fund, Inc., having a stated value of \$1,200,000 and subject to a mortgage of \$800,000. The difference of \$400,000 was originally claimed as a contribution by Navajo Corporation. In a subsequent tax examination of Navajo Corporation by the Internal Revenue Service the value of the real estate was fixed at \$900,000, and the claimed contribution was reduced by \$300,000. The result of this adjustment was to increase the surplus account of Navajo Corporation and its subsidiaries as at February 28, 1950 by \$300,000.

(c) In 1953, the Fund received contributions amounting to \$984,001 from the following donors:

Neville Corporation.....	\$17, 000
Jemkap, Inc.....	967, 000
J. M. Kaplan.....	1
Total.....	984, 001

The amount of \$967,000 represents a promissory note made payable to Jemkap, Inc. by Mr. J. M. Kaplan. The note is payable upon Mr. Kaplan's death and is without interest. The instrument was given to Jemkap, Inc. in satisfaction of monies advanced in 1952 to Mr. J. M. Kaplan by Jemkap, Inc. and these advances were reflected on the books of Jemkap, Inc. during the fiscal year ended February 23, 1953.

## 320 TAX-EXEMPT FOUNDATIONS: IMPACT ON SMALL BUSINESS

Analysis of the consolidated surplus account for the year ended February 28, 1954 of Navajo Corporation and Jemkap, Inc., as shown on the books of the corporation and as adjusted are as follows:

	<i>As stated</i>	<i>As corrected</i>
Surplus March 1, 1953.....	\$439, 609. 55	\$439, 609. 55
Additions:		
J. M. Kaplan Notes Dated December 1, 1944, and charged against Surplus in the Fiscal Year Ended February 28, 1945.....	-----	720, 000. 00
Over-Valuation of Real Property Donated in the Fiscal Year Ended February 28, 1949.....	-----	300, 000. 00
Net Income.....	1, 143. 62	1, 143. 62
Total Credits.....	<u>440, 753. 17</u>	<u>1, 460, 753. 17</u>
Debits:		
Dividends—Stock.....	9, 000. 00	9, 000. 00
Contribution in Excess.....	2, 700. 59	2, 700. 59
Federal Income Taxes.....	1, 419. 56	1, 419. 56
Loss on Sale of Mortgage—Sec. 24(b)(1)(a).....	38, 850. 00	38, 850. 00
Contributions not deductible.....	967, 000. 00	967, 000. 00
Federal tax on original stock issue.....	13. 32	13. 32
Total Debits.....	<u>1, 018, 983. 47</u>	<u>1, 018, 983. 47</u>
Surplus—February 28, 1954.....	(578, 230. 30)	441, 769. 70

The surplus as adjusted amounting to \$441,769.70 was arrived at by crediting the account with the following items previously charged off against surplus:

(1) Over-valuation of donation of real estate by Navajo Corporation in 1949, reflected originally as \$400,000 and subsequently reduced to \$100,000, leaving a difference of \$300,000.

(2) The promissory note amounting to \$720,000 and donated to the Fund by National Grape Corporation (predecessor of Navajo Corporation) on December 26, 1944.

This treatment of the \$720,000 note is distinguishable from the treatment of the \$967,000 note because of conditions attached to the former, specifically, the conditions restricting transfer and the possibility of reversion if the net estate of Mr. Kaplan did not exceed \$2,100,000.

Ordinarily charges against surplus by a corporation which donates part of its properties or assets to a charitable organization is proper when an unconditional grant is made.

In the instant case National Grape Corporation did not make an irrevocable grant to the J. M. Kaplan Fund, Inc. of the note for \$720,000, but retained all the indices of ownership. What it gave was a remote future interest, subject also to the sole control by the creator of the J. M. Kaplan Fund, Inc. and also subject to unforeseeable contingencies.

Accordingly, since National Grape Corporation parted with nothing, there was no justification for the charge-off against surplus of \$720,000 and creating an even greater deficit than actually existed.

On June 26, 1953, Mr. J. M. Kaplan also donated 567.51 shares of the common stock of Navajo Corporation. These securities are being carried on the books of the Fund at \$1.00.

Acceptance of such stock by the Fund was conditioned upon four (4) stipulations which are set forth in a letter, dated June 26, 1953, signed by Mr. J. M. Kaplan, and accepted by Mr. Maurice Levin (brother of Mr. Kaplan) as Vice President of the J. M. Kaplan Fund, Inc. The transaction involved a contribution of the entire common stock, issued and outstanding, subject to severe restrictions in transferability, voting rights (which were retained by Mr. Kaplan) and preferential treatment of the entire outstanding preferred stock retained by Mr. Kaplan. Thus, what was contributed to the Fund represented rights of a very questionable value. All of the incidents of ownership and control continued to reside in Mr. Kaplan.

It was stated by Mr. Maurice Austin, a trustee of the Fund, and also the tax attorney of the Fund, that initially it had been Mr. Kaplan's intention to leave the bulk of his estate to the Fund. However, because of the provisions of the Decedent Estate Law of New York which provides that no person may leave more than half of his net estate to charity if he leaves surviving a spouse, child, or other descendant or parent, the Navajo common stock and the two notes were transferred in order to insure his estate a value of \$9,000,000 upon his death (9,000 shares of Navajo preferred stock multiplied by \$1,000) and also to effectuate charges against the estate in the form of the two notes, thereby circumventing the Decedent Estate Law.

III. Analysis of the Forms 990-A, the books of the Fund, and other related data disclosed that extensive borrowing of moneys, to a large extent from affiliated companies controlled by Mr. J. M. Kaplan, had been made by the Fund in order to finance its manifold stock transactions. The practice has been, and continues to be, one of holding securities for short periods of time with repayment of indebtedness from the proceeds of sale. Following are three (3) tables analyzing certain financial transactions by year:

- (a) Loans and Advances Payable—Table 1.
- (b) Investment in Securities—Table 2.
- (c) Stock Transactions—Table 3.

TABLE 1.—*Loans and Advances Payable*

<i>Year</i>	<i>As at December 31</i>
1947-----	\$75, 000. 00
1949-----	-----
1950-----	-----
1951-----	1, 350, 000. 00
1952-----	1, 000, 000. 00
1953-----	-----
1954-----	1, 474, 205. 39
1955-----	7, 811, 239. 90

Interrogation of Mr. Albert Arbor, an employee who handles the buying and selling of securities for the Fund, disclosed that the purposes of the loans were and are to enter into investment transactions by the Fund. All of these transactions are directed by Mr. Kaplan. As shown above the loan account was closed out at the end of 1953. During the year this account showed a number of exchanges between Jem Kap, Inc. (a wholly-owned subsidiary of Navajo Corporation), and the Fund. Examination of the loan account during 1954 disclosed the same pattern of exchanges.

TABLE 2.—Investment in securities

Year	As at January 1	As at December 31
1947-----	\$856,923.38	\$1,081,499.37
1949-----	935,118.73	-----
1950-----	-----	726,746.91
1951-----	726,746.91	2,600,258.71
1952-----	2,600,258.71	2,370,754.02
1953-----	2,370,754.02	1,183,605.30
1954-----	1,183,605.30	2,917,433.05
1955-----	2,917,433.05	9,714,120.91

TABLE 3.—Stock transactions

Year	Number of Sales	Sold Approximately Within One Year of Acquisition	Two Years of Acquisition	Prior
1947-----	77	44	33	-----
1949-----	62	62	-----	-----
1950-----	1	1	-----	-----
1951-----	132	132	-----	-----
1952-----	30	23	7	-----
1953-----	21	15	5	1
1954-----	37	28	9	-----
1955-----	46	45	-----	1
Totals-----	406	350	54	2
Percent-----	100	86	13	1

As shown above 86% of the stock acquired over the years by the Fund was sold within one year of acquisition. The effect of the financial transactions referred to above follows:

(a) As at January 1, 1947 the Fund had completely turned over its portfolios and reflected an investment of \$1,081,499.37 in non-governmental bonds.

The net result of the above transactions resulted in a capital loss of \$25,053.10.

(b) As at January 1, 1949 the Fund had invested in corporate securities the sum of \$935,118.73. During the year, in the short period April 20, 1949 to May 3, 1949, the Fund sold its entire portfolio. As at December 31, 1949, Schedule A of Form 990-A showed a zero investment in securities and an increase of \$896,000 in Notes and Accounts Receivable. At the beginning of the year the latter account showed \$731,000 in receivables, and as at December 31, 1949 the account showed \$1,627,000 in receivables (which includes \$720,000 represented by the note discussed above).

The net result of the security transactions recited above was a capital loss of \$46,220.99.

(c) As at January 1, 1950, the account, Notes and Accounts Receivable, showed a balance of \$1,627,000. At December 31, 1950, the account showed a balance of \$727,000. The decrease shown was \$900,000, which represents a repayment of loans outstanding, and the proceeds were used to purchase securities to the extent of \$726,746.91 on or about December 18, 1950.

The transactions in 1949 and 1950 resulted in a decrease in investment income (not including the capital loss of \$46,220.99 incurred in 1949) of approximately \$110,500, computed as follows:

(1) Annualizing the dividends received in 1949, which amounted to \$23,597.75 for the first quarter of 1949, a projected figure would be \$96,000 ( $\$24,000 \times 4$ ). The difference would be \$72,000 ( $\$96,000 - \$24,000$ ).

(2) Using the annualized figure derived above, \$96,000, and subtracting the interest received amounting to \$57,550 in 1950, results in a difference of \$38,450.

(3) Recapitulation of 1 and 2 above shows that investment income was decreased substantially because of the conversion of the portfolio in the short period April 20 to May 3, 1944, as follows:

Decrease 1949-----	\$72,000
Decrease 1950-----	38,450

Total Decrease in Investment Income----- 110,450

(d) As at January 1, 1951, the Fund had invested in corporate securities \$726,746.91. As at December 31, 1951, Schedule A of Form 990-A showed an increase in the portfolio of the organization amounting to \$1,873,511.80, and the Fund had at that date an investment in marketable securities of \$2,600,258.71. The increase in the portfolio was primarily attributable to the investment of monies borrowed from related corporations amounting to \$1,350,000, and to a lesser extent to capital gains of \$356,822.75. An analysis (as submitted) of the Loans Receivable Account of Jemkap, Inc., disclosed that at the end of the fiscal year, February 28, 1952, an indebtedness of \$1,200,000 was shown due from the J. M. Kaplan Fund, Inc.

(e) As at January 1, 1952 the Fund had invested in corporate securities \$2,600,258.71. As at December 31, 1952, the Fund had decreased its portfolio by \$229,504.69, leaving an investment as at December 31, 1952 of \$2,370,754.02.

During the year the loan payable amounting to \$1,350,000 at January 1, 1952, was reduced by \$350,000, primarily by utilizing the proceeds of securities sold.

(f) In 1953 the Fund showed a capital gain of \$402,184.83. The gain was primarily attributable to the sale of 113,901 shares of Pittsburgh Steel Co. which was acquired in 1951 from corporations controlled by the creator of the Fund.

As aforesaid, the Fund had invested in securities as at December 31, 1951, \$2,600,258.71, of which amount \$1,773,070.26 or approximately 70% of the portfolio was invested in Pittsburgh Steel.

The cashbook of the Fund for the month of April 1953 disclosed that \$26,149.39 was paid to various attorneys for the purpose of conducting an investigation of the affairs of Pittsburgh Steel, because it was stated that the management of said company had been mismanaging its affairs to the detriment of the stockholders.

Moody's Industrial Manual, page 1433, 1955 edition, shows that during the years 1951, 1952 and 1953, no dividends on common stock were paid other than stock dividends. Stock dividends were paid as follows:

2 percent in 1951.
8 percent in 1952.
8 percent in 1953.

Prior to 1951, no dividends, cash or stock, were paid by Pittsburgh Steel on its common stock.

Forms 990-A for 1951, 1952, and 1953 shows that income from dividends decreased materially because of the investment practices of the managers of the Fund as shown below:

<i>Year</i>	<i>Amount Received</i>	<i>Decrease Based on 1951 Income</i>
1951-----	\$48,335.00	-----
1952-----	21,392.86	\$26,942.14
1953-----	16,064.75	32,270.25
Total Decrease-----	-----	59,212.39

As aforesaid, in 1951 the Fund borrowed \$1,350,000 from its creators for the purpose of acquiring additional securities. As at the end of 1953 this indebtedness had been paid off from the proceeds of the sale of these assets.

Notwithstanding the capital gains of \$402,184.83 reflected in 1953, the portfolio of the Fund decreased by the end of 1953 in the amount of \$787,148.72. As at January 1, 1953, the Fund had invested \$2,370,754.02 in securities. As at December 31, 1953, the Fund had invested in securities \$1,183,605.30 and had made an advance of \$400,000 to Etched Products Corporation. The latter transaction will be commented upon subsequently.

From the foregoing it is clearly evident that the investment in Pittsburgh Steel was made primarily for purposes of capital appreciation rather than for investment in income-providing property to be used for purposes specified in the exempting statutes.

(g) As at January 1, 1954, the Fund had invested in securities, \$1,183,605.30. As at December 31, 1954 the Fund had invested \$2,917,433.05, showing an increase in investments of \$1,733,827.75.

The increase was primarily attributable to an increase in borrowed funds amounting to \$1,474,205.79 and to a lesser extent to capital gains of \$287,578.89.

(h) As at January 1, 1955 the Fund had invested \$2,917,433.05. As at December 31, 1955 the Fund had invested \$9,631,553.96, showing an increase in investments of \$6,714,120.91.

The increase in the portfolio was primarily attributable to an increase in, and use of, borrowed funds amounting to \$6,337,034.11, and to a lesser extent to capital gains and cash reserves.

As noted above (Table 3) forty-five (45) securities were sold within one year of acquisition. Of this amount thirty-one (31) were acquired in 1955. Fifteen (15) were sold within one month or less from the date of acquisition. The balance of securities acquired in 1955, sixteen (16), were sold within six months of acquisition. In one case (A. G. Spalding Bros., stock) the Fund consummated a short sale.

Section 501(c)(3) of the 1954 Code (corresponding to section 101 (6) of the 1939 Code) describes certain organizations exempt from Federal income tax, and reads, in part, as follows:

"Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or indi-



vidual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, \* \* \*."

In order to qualify for exemption an organization must show that it is both organized and operated exclusively for one or more of the specified purposes.

A review of the facts, as set forth above, shows that the J. M. Kaplan Fund, Inc., is not operating exclusively within the specified purposes of section 501(c)(3) of the 1954 Code (corresponding to section 101(6) of the 1939 Code), but is operating in the manner of an ordinary investment enterprise.

It is the opinion of this office that where the security transactions and portfolio changes of an organization are of the nature and of sufficient frequency to indicate that the organization is not being operated for the purpose of acquiring property for bona fide investment purposes to be held in good faith for the production of investment income, that it is not entitled to exemption. This is particularly true when:

- (1) The bulk of the transactions are short term.
- (2) A substantial part of the investment in stocks are purchased anticipating capital gains, rather than for dividend income; and the above are coupled with:
- (3) Extensive borrowings of funds for the purpose of entering into speculative transactions; thereby
- (4) Jeopardizing the carrying out of the charitable, educational, or other purpose or function constituting the basis for exemption.

The J. M. Kaplan Fund, Inc. is clearly competing with others in the market place, and since the business is speculative the whole of the principal and profits may be wiped out. An organization, such as this one, which over the years engages in trade, business, or speculation, clearly does not come within the terms of the statute granting exemption from Federal income taxes.

IV. In 1953, the Fund advanced \$400,000 to the Etched Products Corporation in the following amounts:

<i>Date</i>	<i>Amount</i>
December 14, 1953-----	\$120,000.00
December 16, 1953-----	170,714.84
December 17, 1953-----	109,285.16
<b>Total-----</b>	<b>400,000.00</b>

The advances were secured by a second mortgage on realty and a chattel mortgage upon all the machinery, equipment, furniture and fixtures of Etched Products Corporation, together with any replacements, improvements, and subsequent acquisitions.

Title to the stock of Etched Products Corporation, at the time the advances were made, was in the following individuals:

	<i>Class A preferred</i>	<i>Class B preferred</i>	<i>Common</i>
Estate of Albert Nierenberg-----	-----	37	1,245
Theodore D. Nierenberg-----	-----	-----	336
Felice T. Schwartz-----	-----	-----	330
Others-----	32	232	184
<b>Total-----</b>	<b>32</b>	<b>259</b>	<b>2,095</b>

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In fact, the real incidents of ownership (directly or indirectly, as set forth in correspondence submitted to the examining officer) were in the following:

	<i>Directly</i>	<i>Constructively through estate</i>	<i>Total</i>
Rose Nierenberg (sister of J. M. Kaplan) one-third interest in estate. -----		415	415
Theodore D. Nierenberg (nephew of J. M. Kaplan) -----	336	415	751
Felice T. Schwartz (niece of J. M. Kaplan) -----	330	415	745
Others -----	184	-----	184
Total -----	850	1,245	2,095

The loan of \$400,000 referred to above was to be payable as follows:

- (1) \$109,285.16 on April 17, 1954,
- (2) \$3,000.00 in monthly installments beginning January 17, 1955,
- (3) The unpaid balance due and payable on September 23, 1956, and
- (4) Interest to be payable on the 17th day of each month beginning January 17, 1954, at the rate of 10% per annum, provided, however, that Etched Products Corporation is required to pay on account of said interest, a sum equal to 5% per annum on account of interest until there is a default. The Fund agrees to waive the balance of interest if the principal is paid as provided for.

After the death of Alfred Nierenberg, his son Theodore Nierenberg took over the active management of Etched Products. At the time the advance of \$400,000 was made there was included in the liabilities of Etched Products the following:

- (1) Advances made to the corporation by the Estate of Alfred Nierenberg, including accrued interest, and amounting to \$316,070.94.
- (2) Notes payable to the Bankers Trust Company which were secured by accounts receivables of the corporation amounting to \$118,437.60.
- (3) A first mortgage on the real estate owned by Epco Corporation, (wholly owned subsidiary of Etched Products) was held by the Long Island City Savings Bank. The mortgage was security for a loan of \$128,150.
- (4) Chattel mortgages on the equipment, and a second mortgage on the real estate were held by the Reconstruction Finance Corporation. These mortgages were assigned to the J. M. Kaplan Fund, Inc., after the latter paid the R.F.C. the sum of \$170,714.84.
- (5) In addition, personal advances of \$16,650 were made by Mr. Theodore Nierenberg to Etched Products.

In order to "bail out" the indebtedness of Etched Products Mr. Kaplan caused the Fund to advance monies to Etched Products Corporation to repay the loans and to relieve the company of financial pres-

sures. As aforesaid these monies were secured by a consolidated second mortgage on real estate and chattel mortgages on the equipment. Mr. Kaplan also personally guaranteed the obligation of Etched Products to the Fund.

No interest was paid by Etched Products Corporation on its indebtedness for the period beginning December 17, 1953 and ending February 23, 1954.

(1) On February 23, 1954 an agreement was entered into between the Electro-Chemical Engraving Company and Theodore Nierenberg, individually and as executor of the Estate of Albert Nierenberg, and Felice T. Schwartz, whereby Electro-Chemical Engraving Company purchased their interest in Etched Products Corporation consisting of:

- (a) 37 shares of Class B stock.
- (b) 1,911 shares of Common stock (of a total of 2,095); and
- (c) Assumption of payment of indebtedness of \$317,330.94 due by Etched Products Corporation to the Nierenberg Estate on February 23, 1954.

The price agreed upon was \$800,000, \$317,330.94 of which was paid to the Estate on transfer of the indebtedness and the balance to the stockholders (including shares held by the Estate). The debt of \$317,330.94 became owing to Electro-Chemical Engraving Company.

(2) In further consideration of this agreement Electro-Chemical agreed to pay the indebtedness owing to the Fund if Etched Products was unable to do so.

(3) The J. M. Kaplan Fund in turn agreed to release the security behind the loan of \$400,000 made by the Fund to Etched Products.

(4) The agreement further states that the indebtedness to the Fund of \$400,000 by Etched Products, and in the event of non-payment, the obligation of Electro-Chemical to repay the \$400,000 shall be subordinated to the debts, liabilities and obligations owing to all trade and bank creditors existing at the time of the agreement or which at any time thereafter shall be created or incurred.

(5) The indebtedness of \$400,000 and the interest thereon was to be payable as follows:

(a) Minimum payments of \$50,000 per annum. (It was stated by Mr. Austin that payments on amount of principal were being made.)

(b) Interest payable at the rate of 4% per annum from February 26, 1954, payable on the 5th day of July, October, January and April of each year commencing July 5, 1954.

The initial transaction in December of 1953 (the loan of \$400,000 to Etched Products Corporation) is questionable because of the financial condition of Etched Products, the relationship of the parties, the failure to pay interest on the loan, the proviso for waiver of interest, and the nature of the security behind the loan. The interests of the Fund were further diminished by virtue of the agreement of February 23, 1954 because of:

(a) The material alteration of the terms of repayment and the rates of interest as follows:

	<i>Terms of Loan December, 1953</i>	<i>Terms of Agreement February, 1954</i>
Rate of Interest-----	10% per annum on 17th day of each month commencing January 17, 1954. 5% per annum required to be paid on account until there is a default. Balance of interest waived if principal is paid as provided for.	4% per annum commencing July 5, 1954 and thereafter on the 5th day of July, October, January and April of each year.
Repayment of Principal.	To be fully paid by September 23, 1956 or a period of 2 years, 9 months.	To be paid \$50,000 per annum for a period of 8 years.

(b) There was caused to be released the security (real and chattel mortgages) and the loan was subordinated to all trade and bank creditors of Etched Products and Electro-Chemical Engraving Corporations present and in the future.

It would appear that the entire transaction was an integral part of Mr. Kaplan's effort to provide for his sister's and nephew's and niece's welfare when he became apprised of the financial condition of Etched Products Corporation.

On the basis of the facts surrounding the advances of \$400,000 made by the Fund to Etched Products Corporation, it is the opinion of this office that the transaction constituted a "prohibited transaction" within the meaning of section 3813(b) (1) of the 1939 Code which states in part as follows:

"For the purposes of this section, the term prohibited transaction means any transaction in which an organization subject to the provisions of this section—

"\* \* \* (1) Lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to \* \* \* a member of the family (as defined in section 24(b) (2) (D)) of an individual who is the creator of—or who has made a substantial contribution to such organization \* \* \*"

Section 24(b) (2) (D) of the 1939 Code, provides that:

"The family of an individual shall include only his brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants."

In the instant case section 24(b) (2) (D) controls as Rose Nierenberg is a sister of J. M. Kaplan.

The provisions of section 3813 have been violated by reason of the lending of monies to an organization which was financially foundering and by the taking of security (chattel and real mortgages) of questionable value. This is further evidenced by the agreement of February 23, 1954, wherein the security was released and the \$400,000 indebtedness became subordinated to the trade and bank creditors of the borrowing corporation.

V. In 1953, the Welch Grape Juice Company, Inc., sold to Jemkap, Inc., certain of its products which were shipped to Essential Commodities for Israel. The Fund paid Jemkap, Inc., \$46,403.26 for these

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products. The Fund received a credit of \$48,451.50 in Israeli pounds in the Union Bank of Israel, Ltd., by virtue of the sale to Essential Commodities.

On August 28, 1953, the Fund purchased 33,125 shares of stock in American Israeli Paper Mills in part from the blocked funds realized on the sale to Essential Commodities.

The above transaction appears to be an isolated one. However, it should be noted that if carried on regularly such transactions would result in "unrelated business income" as defined in section 512 of the 1954 Code, and corresponding to section 422 of the 1939 Code.

*Observations, Conclusions and Recommendations*

On the basis of the facts developed and enumerated above, it is the opinion of this office that a substantial basis exists for the revocation of exemption for the following reasons:

(1) The J. M. Kaplan Fund, Inc., was not organized and operated exclusively for charitable, religious, educational or other exempt purposes within the meaning of section 101(6) of the 1939 Code (section 501(c)(3) of the 1954 Code), but was availed by the creator for self-motivating interests.

(2) The J. M. Kaplan Fund, Inc., from its inception has borrowed considerable sums of money from organizations owned or controlled by the creator for the purpose of carrying on a trade or business, namely, that of an investment and/or trading enterprise, rather than those activities usually associated with exempt organizations.

(3) The J. M. Kaplan Fund, Inc., in violation of section 3813 of the 1939 Code (corresponding to section 503 of the 1954 Code) engaged in prohibited transactions in 1953 and 1954 within the meaning of the Code.

(4) The J. M. Kaplan Fund, Inc., on an overall basis, was never intended to be, from its inception, availed of for purely charitable, educational or other exempt purposes, and in practice operated as the alter ego of Mr. J. M. Kaplan.

Accordingly, it is the considered opinion of this office that the exempt status of the J. M. Kaplan Fund, Inc., under the provisions of section 101(6) of the 1939 Code and section 501(c)(3) of the 1954 Code, should be revoked, retroactively and prospectively.

Under established procedure this office will recommend to the Commissioner of Internal Revenue, Washington 25, D.C., that your exemption be revoked.

If you do not agree with the foregoing conclusions, you may, within 30 days from the date of this letter file a protest in accordance with the enclosed instructions. Any protest will be given careful consideration and a conference will be granted if requested.

Very truly yours,

DONALD R. MOYSEY,  
District Director, L.M.

Exhibit 16

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
DISTRICT DIRECTOR,  
*New York, N.Y., January 7, 1958.*

The J. M. KAPLAN FUND, INC.,  
*55 Fifth Ave.,  
New York, N.Y.*

GENTLEMEN: This is to acknowledge receipt of your brief in protest to our letter dated March 29, 1957 concerning the exempt status of your organization.

After careful consideration of your brief, and a thorough review of the issues involved, it is the opinion of this office that the recommendations made in the aforementioned letter are correct.

Accordingly, the case file has been forwarded to the Commissioner of Internal Revenue, Washington 25, D.C., for final disposition.

A copy of this letter has been forwarded to Mr. Maurice Austin, % Austin and Diamond, 350 Fifth Avenue, New York 1, New York, in accordance with the authorization contained in a power of attorney on file in this office.

Very truly yours,

RAPHAEL MEISELS,  
*District Director, L. M.*

Exhibit 17

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
DISTRICT DIRECTOR,  
*New York, N.Y., March 24, 1960.*

Form 990—years 1952–53–55 and 56.

The J. M. KAPLAN FUND, INC.,  
*55 Fifth Ave.,  
New York, N.Y.*

GENTLEMEN: Our recent examination of the above noted returns for the years indicated discloses that your organization was exempt from Federal income taxes for such years. Accordingly, the returns will be accepted as filed.

Very truly yours,

KENNETH W. MOE,  
*District Director.*

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Exhibit 18

AUSTIN & DIAMOND,  
ATTORNEYS AND COUNSELLORS AT LAW,  
*New York, N.Y., February 19, 1964.*

DISTRICT DIRECTOR OF INTERNAL REVENUE,  
*Post Office Box 3100,  
Church Street Station,  
New York, N.Y.*

Attention: Mr. Murray Sanders (Group 18).

SIR: I enclose herewith, duly executed in triplicate, Forms 872 extending the statute of limitations to June 30, 1965, for the following:

(1) The J. M. Kaplan Fund, Inc., for the taxable year ended December 31, 1958.

(2) The J. M. Kaplan Fund, Inc., for the taxable year ended December 31, 1959.

(3) The J. M. Kaplan Fund, Inc., for the taxable year ended December 31, 1960.

(4) Jemkap, Inc. and Subsidiary Companies, for the fiscal year ended February 29, 1960.

Please acknowledge receipt of the foregoing and enclosures by signing or stamping and returning the enclosed copy of this letter.

Very truly yours,

(Signed) MAURICE AUSTIN.

Enclosures:

Receipt is acknowledged of the foregoing and enclosures.



**Exhibit 19**

THE J. M. KAPLAN FUND, INC.,  
*New York, N.Y., March 22, 1963.*

[Certified return receipt requested]

HON. WRIGHT PATMAN,  
*Select Committee on Small Business, House of Representatives of the  
United States, 1136 House Office Building, Washington, D.C.*

DEAR SIR: In response to your letter of March 15, 1963, this is to  
advise as follows:

The examination of our various returns on Form 990A was commenced during 1956. The revenue agent's report on the examination of all years through 1955 was sent to us under date of March 29, 1957. During the course of the consideration of this matter, within the Internal Revenue Service, the return for the year 1956 was included.

Under date of March 24, 1960, we received a communication from the office of the District Director of Internal Revenue referring to Form 990 for the years 1952 through 1956, sustaining the exempt status of our organization.

Very truly yours,

THE J. M. KAPLAN FUND, INC.  
Samuel Berger, *Assistant Treasurer.*

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Exhibit 20

AUSTIN & DIAMOND,  
ATTORNEYS AND COUNSELLORS AT LAW,  
*New York, N.Y., January 22, 1964.*

Re The J. M. Kaplan Fund, Inc.

HON. WRIGHT PATMAN,  
*Chairman, Subcommittee, Foundation Study Select Committee on  
Small Business, House of Representatives, 1136 House Office  
Building, Washington, D.C.*

DEAR CONGRESSMAN PATMAN: This is in response to yours of January 11, 1964, re above.

I enclose herewith a Xerox copy of the Internal Revenue Service letter of March 29, 1957, and a photostat negative of the memorandum to the Internal Revenue Service dated July 26, 1962, which I trust you will find readable.

There have been no conferences or hearings with the Internal Revenue Service since July 26, 1962 with respect to the matters referred to in the said July 26, 1962 memorandum or any other matters of the J. M. Kaplan Fund, Inc.

At the time of submission of the analysis made by Mr. Bookbinder with respect to the stock of Endicott-Johnson, Mr. Bookbinder was employed by Jemkap, Inc. at 55 Fifth Avenue, New York, New York.

Please acknowledge receipt of the foregoing and enclosures by signing or stamping and returning the enclosed copy of this letter.

Respectfully,

MAURICE AUSTIN.

Exhibit 21

AUSTIN & DIAMOND,  
ATTORNEYS AND COUNSELLORS AT LAW,  
New York, N.Y., July 28, 1964.

Re: The J. M. Kaplan Fund, Inc.

Hon. WRIGHT PATMAN,  
*Chairman, Subcommittee Foundations Study, Select Committee on  
Small Business, 1136 House Office Building, Washington, D.C.*

SIR: This is in response to yours of July 27, 1964.

(1) There have been no conferences or hearings with the Internal Revenue Service from January 22, 1964 to date.

(2) There has been no correspondence between the Internal Revenue Service and The J. M. Kaplan Fund, Inc. from January 22, 1964 to date, except as follows, copies of which are attached:

(a) Letter from me, dated February 19, 1964, to the Internal Revenue Service, enclosing Forms 872.

(b) Letter from The J. M. Kaplan Fund, Inc., to the Internal Revenue Service, dated May 14, 1964, enclosing Form 990-A.

(3) The Internal Revenue Service has not assessed any taxes on The J. M. Kaplan Fund, Inc. for the taxable years 1957 to date.

Please acknowledge receipt of the foregoing and enclosures by signing or stamping and returning the enclosed copy of this letter.

Very truly yours,

MAURICE AUSTIN.

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## Exhibit 22

[From New York Journal-American, Jan. 5, 1961]

### LESLIE GOULD, FINANCIAL EDITOR: BID FOR ENDICOTT JOHNSON "HOT NEWS"—WAS IT LATE?

The attempt to "take-over" the Endicott Johnson Corp. by Glen Alden Corp. via a tender to stockholders raises some questions for the Stock Exchange and the Securities and Exchange Commission.

Both companies have their shares listed on the Stock Exchange, which has just inaugurated a new policy as to immediate release of "hot news" that will influence a stock.

The SEC also has requirements for prompt disclosures, particularly when a proxy fight threatens.

Endicott Johnson is an old line shoe maker, headquartered in upstate New York in the Binghamton area. It is a major source of employment in the area, which is already suffering considerable unemployment.

Glen Alden—once an anthracite coal company—is now a complex embracing coal, leather tanning, motion picture theatres and production of aluminum and steel parts for the auto industry.

### ACTIVE IN "TAKE-OVERS"

The head of Glen Alden is Albert A. List, who has been active in the "take-over" field and who operates some times through a tax free charitable foundation.

Another individual involved in the matter is Jacob M. Kaplan, a director of Endicott. Kaplan, who also has a tax free charitable foundation, made a fortune in Welch Grape Juice, following a take-over in the 1930's.

Kaplan exchanged 60,000 Endicott Johnson shares held in his charitable trust and in another company for Glen Alden stock held by List's foundation. So far, there has been no disclosure as to what kind of a deal Mr. Kaplan made nor as to how many shares of Glen Alden he received.

His deal was made on Dec. 29, after negotiations of a week or 10 days.

### GLEN ALDEN OFFER FOLLOWS

Two days later—the 31st—Glen Alden mailed to Endicott Johnson stockholders an offer of \$30.50 a share, which was \$3 above the close for the stock Dec. 30. The shoe company stockholders got the offer in the mail Monday—the second—or Tuesday—the third.

A question for the SEC is who supplied Glen Alden the Endicott Johnson stockholder list? Endicott Johnson's president says Kaplan did.

Another question is did anyone connected with Endicott Johnson supply Glen Alden confidential information as to the shoe company, such as copies of an engineer report? Endicott Johnson's president says Kaplan did.

In line with the Stock Exchange's "hot news" requirements and the SEC's requirements as to disclosure when a proxy fight threatens, the movements in the market call for some explaining.

Endicott Johnson closed Dec. 28 at \$24.62½, unchanged from the previous day. Volume was 2,300 shares. The next day—the date of Mr. Kaplan's deal—volume jumped to 4,600 and the price rose \$1.37½ to \$26. The next day—the 30th—volume was 4,400 with the day's close \$27.50, up \$1.50. It sold that day as high as \$28.

The first day of trading of the new year the stock jumped to \$31, up \$3.50 on a volume of 9,800 shares. The news was then out of the Glen Alden offer. The next day—the 4th—the stock touched \$31.12½ and closed at \$31.

In the same period Glen Alden did little, actually losing about 25 cents a share between Dec. 27 and Jan. 4.

#### TRYING A LONG TIME

Mr. Kaplan had been trying to dispose of his stock some time before his deal with Glen Alden and List. Last Spring he reported to Endicott Johnson that List might be interested in buying control. Then, he wanted Endicott Johnson to buy his stock, either directly or use pension fund money. Later he sought to arrange a secondary distribution of his stock through the company's bankers. Then, he made his deal with List, followed by Glen Alden's offer for tenders of Endicott Johnson stock.

Kaplan's deal for his stock and the Glen Alden offer did not become public knowledge until after the Endicott Johnson stock started to move.

The question for the Stock Exchange is was there any "leak" on the tender offer?

#### Endicott Johnson Corp.

	High	Low	Close	Net Chg.
Dec. 27-----	25¼	24½	24½	— ⅞
Dec. 28-----	25	24½	24½	-----
Dec. 29-----	26	24½	26	+ 1⅞
Dec. 30-----	28	26½	27½	+ 1½
Jan. 3-----	31¼	30¾	31	+ 3½
Jan. 4-----	31½	31	31	-----

#### Glen Alden Corp.

	High	Low	Close	Net Chg.
Dec. 27-----	15⅞	15	15⅞	+ ¼
Dec. 28-----	15⅞	14¼	14¼	— ⅞
Dec. 29-----	15⅞	14¼	15	+ ¾
Dec. 30-----	15½	15⅞	15¼	+ ¼
Jan. 3-----	15¼	14¾	14½	— ¼
Jan. 4-----	14¾	14¾	14¾	+ ¾

### Exhibit 23

[From New York Journal-American, Jan. 8, 1961]

#### LESLIE GOULD, FINANCIAL EDITOR: ENDICOTT JOHNSON A "RERUN" OF DIRECTOR'S EARLIER DEAL

For Jacob Kaplan, the Endicott Johnson director who sold out to the group seeking to take over the Nation's No. 2 shoe company, the episode is almost a rerun of an earlier venture.

Then, Kaplan, who operates largely through one of those tax free charitable foundations, set out to become a steel tycoon. The time was 1951.

In Endicott Johnson, Kaplan about two years ago acquired 60,000 shares or 7 percent of the shoe company's stock. He put 54,000 shares in the charitable foundation. His next move was to demand and get a place on the board, making him an "insider."

#### KAPLAN SHOULD DISCLOSE

He has just swapped his holdings for stock in Glen Alden, an industrial complex, and two days later Glen Alden made an above-the-market offer to Endicott Johnson stockholders for their holdings.

The yet to be answered question is what if any difference there is between the deal made with Kaplan and the cash offer to Endicott Johnson shareowners. Glen Alden is headed by Albert A. List, who also has one of those tax free charitable foundations.

Kaplan made his fortune in Welsh Grape Juice and earlier in a market coup in Cuban molasses.

In his bid to become a steel tycoon, Kaplan first bought into Pittsburgh Steel Co., which, like Endicott Johnson, is largely a family run affair. The company then was dominated by J. H. Hillman, Jr., and his family.

#### HILLMAN PROVES ADROIT

Kaplan, as in Endicott Johnson, demanded and got a place on the Pittsburgh board. Hillman instead of giving battle to Kaplan did an adroit selling job. This was that since Hillman had 20 per cent of Pittsburgh, maybe a more fertile field would be in Sharon Steel.

It just so happened that another Hillman enterprise—Pennsylvania Industries—had 64,000 shares or 6½ per cent of the Sharon stock. The Hillmans might be persuaded to swap the Sharon stock for Kaplan's holdings in Pittsburgh. Kaplan "bought" the deal. At

the same time Sharon bought Pittsburgh Steel's holdings in National Supply.

Kaplan demanded a place on the Sharon board, but after getting on he had several run-ins with the two Roemers—H. A., sr., and jr.—who were chairman and president and who with their families had 20 per cent of the Sharon stock.

#### BLOCKED, SO HE SELLS STOCK

Kaplan never got any further in his move to gain control, so an arrangement was made for him to sell his holdings at virtually the price he had paid. This was done through a secondary distribution.

Prior to this there were stories in Pittsburgh that Kaplan had plans to head up a merger of Sharon and several other small independent steel companies.

In his Welsh Grape Juice deal, Kaplan, who acquired control in 1945, made an unparalleled partnership agreement—turning Welsh over to the 4,976 member National Grape Co-operative Association. This was in 1952. The deal in effect provided for payment out of Welsh profits, and Kaplan's return was handsome.

In Endicott Johnson, Kaplan first tried to have the company or its employe pension fund buy him out. Next, he sought to make a secondary distribution. Then, he made his swap deal with Albert List and Glen Alden, controlled by List.

The market movements of Endicott Johnson shares on the Stock Exchange are interesting. The directors, including Kaplan, on Dec. 9 voted to omit the 40-cent quarterly dividend. The stock that day broke \$3.50 to \$25.50, and sold down later to a low for the year of \$23.50. Earlier in the year it had been as high as \$38.50.

#### TWO QUESTIONS FOR SEC

The day before Kaplan closed his deal to get out the stock closed at \$24.62½. The next day—the 29th—the day of his deal—it went up \$1.37½ and \$1.50 on Dec. 30 and on Jan. 3—when Glen Alden made the \$30.50 a share tender to stockholders—it jumped \$3.50 to close at \$31. It closed last night at \$31.62½.

Two questions for the SEC are:

Who bought after the low was made on the dividend omission?  
Who bought before the Glen Alden cash offer was made public?

## Exhibit 24

[From the Philadelphia Bulletin, Jan. 17, 1961]

### THE BUSINESS OUTLOOK: STOCK SWAP BY 2 CHARITIES LED TO FIGHT FOR SHOE FIRM

(By J. A. Livingston, financial editor)

Up in the Triple Cities area of New York State, citizens of Endicott, Johnson City, and Binghamton have become Bunker Hillers—but with stock certificates not muskets.

They have organized to repel a corporate invader armed with the funds of a tax-free charitable foundation. So, you and I, as federal taxpayers, are inadvertent participants in this struggle for control of Endicott Johnson Corp., the nation's second largest shoe company.

As a first move toward acquiring Endicott Johnson, Albert A. List, president of Glen Alden Corp., traded an unspecified number of Glen Alden shares owned by Albert A. List Foundation, Inc., for the 60,000 Endicott Johnson shares controlled by J. M. Kaplan. Fifty-four thousand of these came from the J. M. Kaplan Fund, Inc., also a charitable foundation.

#### TOWNSPEOPLE ORGANIZE

Kaplan had controlled Welch Grape Juice, Hearn's Department Stores, and other companies. Glen Alden, once primarily an anthracite company, is now a corporate conglomerate of textiles, auto parts, movie houses, real estate, oil and gas.

The skein of events began on November 12, 1959. According to a court affidavit, Kaplan then presented himself to the Endicott Johnson board of directors as the owner of 60,000 shares of stock through his foundation and relatives. He was elected to the board. Once List had Kaplan's stock in hand, he made an open offer to all Endicott Johnson stockholders to buy them out at \$30.50 a share.

Frank A. Johnson, president of Endicott Johnson, and townspeople organized committees to buy up shares to vote against Glen Alden in a proxy fight. They feared Glen Alden might liquidate the company and deprive the communities of their largest employer. List denies any such intention. He says he wants to reorganize the company and rebuild its earning power.

Regardless of intent, the episode reveals in full nakedness how charitable foundations can be misused. A charitable trust, or foundation, is granted tax-free status by Congress solely for a charitable purpose. Assets are not to be employed to enrich the donors or founders or to aggrandize their economic power.



#### UNNECESSARY RISK?

A person can build up a foundation by contributing, every year, part of his income. If the investments are well chosen, the fund may grow rapidly through capital appreciation. Only income must be disbursed.

The foundation's sponsor may be able to use the assets to buy control of companies. In so doing, he becomes an indirect beneficiary of the trust through the power it confers on him. He can install himself as president of a corporation so acquired. He can find jobs for friends, relatives and business associates. He can favor friends with business.

Kaplan has said that Endicott Johnson was a "dying company." Therefore, he wanted to bring in Glen Alden's management to revive it. That raises this question: Is it prudent and proper for a trustee of a foundation to invest charitable funds in a company which he thinks requires a managerial pulmotor? Isn't that taking a speculative risk which a trustee ought to avoid?

Reports of charitable trusts to the Treasury do not easily disclose how assets are being used. Information returns must be filed annually disclosing income, disbursements, and assets. However, unless the trust owns "10% or more of any class of stock of any corporation," it doesn't have to disclose the name of the company. If a large taxpayer sets up several trusts himself or through relatives, he could without disclosure, easily control companies by confining holdings in each trust to less than 10% of a company's stock.

#### MORE INFORMATION NEEDED

To guard against the use of charitable foundation assets for purposes of corporate control, it might be well for the Treasury Department to seek additional information to get behind a trust's facade. It might ask:

Are any officers or trustees of the trust or foundation or any of its major contributors officers, directors or principal (10%) stockholders in a corporation in which the trust has an investment of more than 5% of its net assets? If yes, who are they and which are the corporations? This would disclose control or influential relationships of officers, trustees, and contributors to corporations.

Furthermore, a list of stocks in which the trust has more than 5% of its net assets invested ought to be required. Then, by inspection, Treasury officials and the courts could determine whether a trust's assets were diversified or were concentrated in a few stocks.

Kaplan and List may not have abused their trusts, but their transaction points up the manner in which a charity sometimes serves two masters.

Exhibit 25

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
Washington, D.C., October 30, 1964.

HON. WRIGHT PATMAN,  
*Chairman, Subcommittee Foundation Study, Select Committee on  
Small Business, Room 1136, House Office Building, Washington,  
D.C.*

DEAR MR. PATMAN: This is in further response to your letter of October 9, 1964 in which you requested copies of four Revenue Service documents dealing with the J. M. Kaplan Fund. Three of the documents in question (carrying August 7, 1956, December 31, 1956, and September 23, 1959 dates) represent internal correspondence between our district office in New York and the Rulings Division in the National Office.

It has long been the position of the Treasury Department that proper administration of the revenue laws requires such intra-agency advisory opinions be kept within the confines of the Executive Branch. Therefore, in the interest of maintaining free expression of opinion within the Service, I am not able to make these documents available to you.

We have no record that the fourth document, referred to by you as a "July 8, 1958—Memoranda, etc. of conferences at the National Office," ever existed. At any rate it is not to be found in our files.

Sincerely,

BERTRAND M. HARDING,  
*Acting Commissioner.*

**Exhibit 26**

RUSSELL SAGE FOUNDATION,  
*New York, N.Y., September 17, 1964.*

Mr. MITCHELL ROGOVIN,  
*Assistant Commissioner,  
Office of Internal Revenue,  
12th Street and Constitution Avenue,  
Washington, D.C.*

DEAR MR. ROGOVIN: I am replying to your inquiry concerning Russell Sage Foundation's appropriations to State agencies during the past two years.

At its meeting of May 6, 1964 the Board of Trustees of Russell Sage Foundation appropriated an amount not to exceed \$50,000 in support of an analysis of the operations of more than 5,000 charitable trusts and corporations registered and filing financial reports with the Attorney General of California. The objectives of the analysis are two-fold: (1) to examine the nature and types of charitable organizations in California, and (2) to devise a system for the annual compilation of data that would reflect the evolution and growth of private charitable organizations.

General supervision of the study is provided by Wallace Howland, Assistant Attorney General; fiscal administration is provided by the office of the State Controller; disbursements are made from a special account in the State Treasury for stated purposes by the Controller on order of the Attorney General.

There is one other appropriation in which the recipient might be viewed as a State agency. This appropriation was made to the National Conference of Commissioners on Uniform State Laws. At its meeting of May 6, 1964 the Board of Trustees of Russell Sage Foundation appropriated an amount not to exceed \$23,500 in support of an analysis of the problem of uniform legislation in the field of consumer credit and the preparation of a monograph.

General supervision of this study is provided by Professor Allison Dunham of the University of Chicago Law School and Executive Director of the National Conference of Commissioners on Uniform State Laws; fiscal administration is provided by the National Conference through their Treasurer, Mr. Talbot Rain of Dallas, Texas.

The Foundation has not made other appropriations to State agencies during the past two years. It has, of course, made many appropriations to State-supported colleges and universities. These are not ordinarily viewed as State agencies, so I am not including a description of these appropriations in this letter.

In the event that you wish further information concerning these appropriations or any other activities of the Foundation, please let me know.

Sincerely yours,

ORVILLE G. BRIM, Jr.

Enclosures:

1. Copy of request for grant to finance an analysis of charitable trusts and corporations in California, March 31, 1964, to Russell Sage Foundation, from Wallace Howland, Assistant Attorney General, Department of Justice, State Building, San Francisco 2.
2. Copy of request for support of an analysis of the problem of uniform legislation in the field of consumer credit and the preparation of a monograph, March 23, 1964, to Russell Sage Foundation, from Allison Dunham, Executive Director, National Conference of Commissioners on Uniform State Laws.

STATE OF CALIFORNIA,  
OFFICE OF THE ATTORNEY GENERAL,  
DEPARTMENT OF JUSTICE,  
*San Francisco, March 31, 1964.*

Re Request for Grant to Finance an Analysis of Charitable Trusts and Corporations in California.

RUSSELL SAGE FOUNDATION,  
230 Park Avenue,  
New York, N.Y.

GENTLEMEN: Request is made for a grant by Russell Sage Foundation in an amount not to exceed \$50,000 to finance an analysis of the operations of more than 5,000 charitable trusts and corporations presently registered and filing financial reports with the Attorney General of California.

The objectives of the proposed analysis would be twofold. First, it would disclose the nature and dimensions of charitable organizations at work in the most populous state of the Union. No study as comprehensive or in such depth as is here proposed has been made heretofore for want of readily available source of material. Such material is now contained in the Registry of Charitable Trusts, an agency of the Office of the California Attorney General.

The second objective would be to devise a system for the annual compilation of a continuing series of significant statistics and data that would accurately reflect the evolution and growth of private charitable organizations of all types. Such a system could be extended to the increasing number of states which, in recent years, have followed the lead of California in requiring registration and financial reporting by charitable organizations to their respective Attorneys General.<sup>1</sup> These states already comprise a group whose data, if compiled and reported on a uniform basis, would be of national significance and importance.

<sup>1</sup>The Uniform Act has been adopted, in some cases with modifications by California, Iowa, Michigan, Illinois, Oregon. It is under consideration in Virginia, Washington, Wisconsin, and Missouri. States having other forms of registration requirements include New Hampshire, Rhode Island, and Pennsylvania.

The background giving rise to the need for the proposed project is as follows:

#### THE CALIFORNIA REGISTRY OF CHARITABLE TRUSTS AND ITS BACKGROUND

In 1955 California was the first state to enact the Uniform Supervision of Trustees for Charitable Purposes Act (Calif. Stats. 1955, chap. 1820; Gov. Code, §§ 12580-95). In the drafting of this statute, California worked closely with the Board of Commissioners on Uniform State Laws. First enacted for a trial period of two years, it was extended in 1957 and made a permanent feature of California law in 1959 (Calif. Stats. 1959, chap. 1258). A copy of the Act and the regulations issued thereunder is attached as Exhibit A.

Briefly stated, this Act is a registration and reporting statute. As an aid to the Attorney General in his common law function of being the legal representative of the beneficiaries of property dedicated to charitable purposes, the Act requires every individual trustee and charitable corporation holding property in trust for charitable purposes to register, file its founding documents, and submit periodic financial and other reports to the Attorney General. Excepted from this requirement are religious organizations, educational institutions, and hospitals. Bank Trustees must register but are not required to file routine periodic reports.

By 1959 the volume of registrations and the resulting administrative burden had risen to the point where Attorney General Stanley Mosk created, as a part of his own Office, what has since been known as the Registry of Charitable Trusts.

Located in Sacramento, the Registry is the centralized depository of all registrations, periodic reports and documents pertaining thereto. The staff of the Registry presently comprises the registrar, three qualified auditors who make office examinations of the financial reports, and four clerical assistants.

As of January 1, 1964, there were 5,203 charitable trusts and corporations registered and filing periodic reports with the Registry; an additional 550 potential registrations were in various stages of completion. 1963 is the first year during which there has been a decrease in both the monthly and annual rate of registration. We are of the opinion that present registrations comprise 90 per cent or better of those presently required to register. The current rate of some 78 registrations each month for the most part reflects the creation of new charitable trusts and corporations. We expect it to increase rather than diminish in the years ahead.

By express provision in the Act, the register of charitable trusts, the founding documents and periodic reports of registrants are open to public inspection.

During 1963 examination of the public files in the Registry comprised 271 visitor days. Most of these examinations were for the purpose of ascertaining sources of charitable funds available for purposes in which the visitors were interested.

THE NEED FOR A COMPREHENSIVE ANALYSIS OF THE FILES OF THE REGISTRY

The files of the Registry now contain complete data concerning the type and purpose of each registrant and an up-to-date financial analysis of its operations. Included is a complete schedule of investments in all cases where the security portfolio is valued at \$100,000 or more.

The actual register comprises a Kardex file in which are recorded only basic information and a generic classification of purpose.

Examination of any file in the Registry will thus give a complete picture of the nature and operations of each registrant. To date, however, it has not been possible to analyze, classify, and tabulate the available data. Consequently, it is quite impossible to know anything of the nature and extent of private charity in California, taking it as a whole.

The 5,200 registrants include both individual trustees and charitable corporations of all types. They include both foundations and operating charities. As used here, the term "foundations" refers to all types of endowments and contributions of capital, the income from which is distributed to others for actual expenditure; it thus includes both incorporated foundations and testamentary trusts whose corpus is permanently dedicated. The term "operating charities" refers to all types of organizations and agencies engaged in the actual performance of a charitable service or function, regardless of the source of their funds or the manner of their procurement.

Based upon projections of samplings made some time ago, it is estimated that the 5,200 registrants, in the aggregate, control fixed capital of the order of \$4 billion and have an annual income from all sources in excess of \$400 million. These estimates are significant in evaluating the scope of the Attorney General's supervisory responsibility. Note, however, that the estimates include transfers between charitable organizations of an unknown amount. For example, a foundation may grant money to a Community Chest which, in turn, distributes a part of it to an operating charity such as a day nursery for working mothers. One charitable dollar would thus be reported three times.

At present, there is no way of knowing the extent of the foundation movement: the number of incorporated foundations as compared to unincorporated trust estates, their aggregate assets, income, or the charitable purposes which they serve. Likewise unknown is the number and type of operating charities working in any given field of endeavor, the relative importance of their different sources of income and methods of fund raising.

To date there is no uniformity in the financial reporting practices of charitable organizations, even among those of similar types working in the same or closely related fields. Until now, the Attorney General of California has refrained from prescribing any specific or uniform reporting system. It was felt that it would be premature to move in this direction until the present actual practices were known and could be evaluated. The administration of the Registry to date has disclosed individual situations pointing to a need for legislative changes in such widely varying fields as probate practice, corporation law governing the formation and operation of nonprofit and chari-

table corporations, and the statutes governing the administration of charitable and other public trusts as distinguished from private trusts. Until the files of the Registry are analyzed and classified, however, it is impossible to quantify the extent of any given practice or the lack thereof and otherwise to evaluate the importance and the need for legislation action. One example of this should here suffice.

Lacking any statewide system of controlling abuses that have arisen in the public solicitation of funds for charitable purposes by campaigns and fund-raising drives, some 100 or more municipalities and counties in California have established some type of permit or licensing requirement for those engaged in public solicitation. The resulting duplication has created administrative difficulties and attendant expense on the part of organizations operating throughout the state, or even major portions thereof. Short of an analysis of the files of the Registry, the number, size and relative importance of these organizations is not known. Without such a frame of reference it is difficult to evaluate the need for statewide licensing or estimate the cost thereof, or to give adequate consideration to alternative suggestions, such as statewide uniform licensing requirements to be locally administered.

Reference has already been made to the fact that the founding documents and financial reports of California registrants are open to public inspection. At present there is no index to the files of the Registry by specific purpose, type of organization, or the present availability of funds or services of the type concerning which information is being sought. For want of such classification and index there is a more or less constant duplication of the research and examinations made by interested persons. Recently the representatives of some six institution of higher learning were forced to make identical, time-consuming examinations of several hundred files in order to obtain specific information that should have been much more quickly and readily available. Each of them, seriatim, duplicated the work done by the others.

#### THE PROPOSED PROJECT AND THE NEED FOR PRIVATE FINANCING

During the past year considerable effort has been devoted to developing and listing the data that should be obtained from an overall analysis of the Registry files. Several broad fields of inquiry are involved: the nature, purpose, and structure of the organization; its control, with reference to the persons or authority to which it is directly responsible; the sources of its funds; the method and purpose of the distribution or expenditure of funds; the nature and extent of its assets and investments, income and expenditures. Also of interest are the extent and nature of certain powers, privileges, and rights granted by present law whose propriety, while undoubted with respect to private trusts and private corporations, may be questionable when applied to charitable institutions.

It is practicable to put data extracted from the files on IBM punch cards. This will permit data processing by the staff and equipment already in the California Department of Justice. This is the overall departmental structure of which the Attorney General is the head, and which includes among its components the Office of the Attorney General and the Registry of Charitable Trusts.

Much of the data desired is static. For example, the legal nature of the organization seldom changes. On the other hand, it also comprises financial information which is subject to annual change. This latter aspect of the overall picture is scheduled to be arranged by data processing technicians so as to form a practical and convenient basis for continuing series of annual statistics.

The examination of the source material contained in the 5,200 files and the extraction and recording of the required data on worksheets is a project of considerable magnitude in terms of the man-hours involved. It is quite beyond the capability of the permanent staff of the Registry to undertake it.

Consideration has been given to the various ways in which qualified personnel could be obtained to extract the required data from the raw source material. For all practical purposes the State Government of California is on a civil service basis. For this and other reasons there are substantial legal, as well as administrative, difficulties in recruiting the various skills required for this project because of its short duration. Moreover, it is impracticable to obtain the necessary manpower on a short-term basis from other departments or agencies of the State.

If the necessary funds can be obtained from private sources, there are no legal obstacles to its receipt and use by the State of California to defray the expenses of the proposed project. There is precedent and established procedure for the deposit in a special account in the State Treasury, somewhat akin to a trustee account in private usage, of funds granted for a specified purpose. In this case, disbursements from such a special account would be made for the stated purposes by the State Controller on order of the Attorney General.

Investigation has revealed the availability of qualified personnel, resident in Sacramento where the Registry is located, to undertake this project. If funds are made available the Attorney General proposes to contract with a qualified research organization to assume the responsibility for the selection and employment of a project staff including a project director who will give full time supervision to the work. Several members of the faculty of Sacramento State College with practical experience in research of this type have become interested in the project. Happily, it is feasible to conduct the examination of the Registry files during the coming summer months when graduate students in accounting, several of them already qualified as CPAs, would be available to do the actual work.

There are no legal problems involved in the Attorney General contracting for the services outlined above and making payments therefor from funds on deposit in a State Treasury Special Account. In short, California law and the procedure already established thereunder permits considerable flexibility.

Our studies and tentative selections of data to be compiled from the files have gone as far as practicable with our own resources. By letter dated February 3, 1964 addressed to Dr. Leonard Cottrell, Assistant Director, Russell Sage Foundation, was furnished with the then current listing of the data and information in which the Attorney General is interested.



If the project is to result in the greatest utility and benefit to charitable organizations of all types and the interested public, it is highly desirable that we be in a position to confer with and have the assistance of consultants qualified in this field. We should like to submit the classifications and other data we have tentatively selected to the scrutiny, criticism and suggestions of a panel or committee of qualified individuals. Such a panel would include representatives of the major types of charitable organizations, viz., foundations, testamentary trusts and operating charities. In this connection, it would be most helpful if it could be arranged for us to have the benefit of Mr. F. Emerson Andrews' broad experience.

After consultation with those who would be in charge of the actual work, we estimate that the actual examination of files of the Registry and the reduction of the desired data to work sheet form can be accomplished by the end of September providing that the work can be planned to commence not later than June 1. A proposed budget covering the expenses to be paid with donated funds is attached hereto.

On its part, the State would expect to make available the services of the Registrar and the Assistant Attorney General in Charge of Charitable Trusts matters to give general direction to the project and to resolve questions arising from the course of the work. In addition, one or more of the clerical staff of the Registry familiar with the files and existing procedures would guide and assist the project staff in every way possible. The extensive data processing equipment of the California Department of Justice would be made available as required. Finally, the facilities of the State Printer would be available to print whatever reports, directories, or other publications may appear desirable concerning the results of the project.

THE PROPOSED PROJECT WOULD COMPLEMENT OTHER STUDIES BEING MADE  
BY RUSSELL SAGE FOUNDATION

We are aware of the work of Mrs. Marion R. Fremont-Smith on behalf of Russell Sage Foundation in making a study of Public Accountability of Charitable Funds. We understand that this comprises a comprehensive survey of the existing programs of regulation and supervision by the several states active in this field as well as by the federal government.

We believe that the project here proposed would be a natural complement to the present Study. By establishing for the first time quantitative relationships which exists between important segments of private charity, it would provide a valuable frame of references for evaluating the need for and effectiveness of present regulatory programs, both state and federal. The type and extent of the supervision required by foundations and other endowed institutions and trusts whose function is limited to the management of capital funds and the distribution of income obviously differs from that required by operating charities. Likewise, within the latter class, there are self-evident differences between those which engage in their own fund-raising activities and those which rely upon fund-raising organization. These, in turn, vary from Community Chests to profes-

sional fund-raisers who charge a fee for their services. The quantitative extent and relative importance of these problems cannot be evaluated until compilation of data as complete as that now contained in the California Registry, such as is here proposed, has been made. Equally unknown is the influence and importance of corporate endowments as compared with testamentary trustees. Yet to all of these and other classifications does the common law authority of a State Attorney General extend. Until a perspective of the overall picture of private charity at work is obtained, there is grave danger of misplaced emphasis in regulatory legislation or supervisory activity. It is in this sense that the proposed subject will implement and add significance to the above-mentioned Study of Accountability of Charitable Funds.

Similarly, we are aware of the Study of the Investment Policies of Foundations currently being made for the Russell Sage Foundation. The California Registry requires the annual filing of the complete details of all investment portfolios of charitable trusts and corporations having a value in excess of \$100,000. While statements of investment policies are not routinely required, analysis of the portfolio schedules on file would throw significant light upon the actual investment practices of many types and classifications of charitable organizations. It is believed that this would give added breadth and statistical depth to the present Study of Investment Policies.

In view of the practice of Russell Sage Foundation in publishing commentaries and reports of the many research projects it has undertaken in the past, it is assumed that the Foundation might well desire to follow a similar course upon completion of the project here proposed. We foresee neither legal obstacles nor other objections, especially in view of the fact that the basic information to be surveyed is presently contained in documents which, by mandate of the California Statutes under which they are filed with the Registry, are open to public examination. A matter of some priority with the California Attorney General, however, is the availability of the project results for consideration by his Advisory Committee on Charitable Trust Matters, now in process of formation. Therefore, it may well be that the State will desire to reproduce and publish statistics, tables, charts and other information in a format suitable for its own purposes well in advance of the preparation of any publications that the Foundation might desire to undertake.

So that you may understand the scope of our present plans, we propose to appoint in the near future an Attorney General Advisory Committee on Charitable Organization. This will be a broadly based Committee composed of outstanding civic leaders with experience and who demonstrate an interest in charitable work representative of leading organizations of the several different types to be found within the framework of the charitable movement and other qualified persons. Similar committees have, in the past, made substantial contributions in analyzing problems of public concern and formulating solutions

thereto. Obviously the work of such a committee in the field of charitable activities would greatly benefit from the results from the project here proposed.

We appreciate the interest in the Registry and the work of our office as shown by Mr. Donald Young on his recent visit to California. He can undoubtedly implement the proposal here made with his own observations. If any further information concerning this matter is desired, it will be forthcoming promptly upon request. Supplementing this proposal are the several documents that we sent with our letter of February 3, 1964 addressed to Dr. Cottrell. Additional copies are available if desired.

Sincerely yours,

STANLEY MOSK,  
*Attorney General.*

By WALLACE HOWLAND,  
*Assistant Attorney General.*

*Proposed budget, California Registry of Charitable Trusts project—  
Based on six months duration*

Supervision.....	\$5,148
Working Staff.....	25,950
5200 files at 1½ hours per examination is 6,916 man-hours or 173 man-weeks at an average wage of \$150 per week or approximately \$3.75 per hour.	
Administrative Overhead:	
Payroll preparation and disbursing, 10% of labor; including employer contributions for various tax purposes, processing of withholding tax, etc.....	3,110
Equipment rental, supplies, communications.....	2,500
Rent.....	3,600
Large, suitable workroom available in same building in which the Registry is located. Includes light and heat but no janitor services. \$600 per month.	
Consultants and Conferences.....	6,000
Includes travel and subsistence for Consultants and Committee members participating in project purposes.	
Contingencies and Printing Expenses.....	3,692
	<hr/> 50,000

**Exhibit 27**

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS,  
*March 23, 1964.*

Dr. LEONARD S. COTTRELL,  
*Russell Sage Foundation,  
230 Park Avenue,  
New York, N. Y.*

DEAR DR. COTTRELL: As you recall, I wrote you on February 5 concerning the possibility of the Russell Sage Foundation being interested in helping the National Conference of Commissioners on Uniform State Laws finance the preliminary aspects of its project to draft comprehensive legislation in the field of consumer credit. You kindly invited me to New York to confer with you and Dr. Brim, and you also helped me with my problem of securing a competent sociologist to prepare the monograph referred to in my letter. As a result of my consultations with prospective sociologists, it appears to me that my original application was faulty in the request for funds. I had omitted, for example, an item for the cost of purchasing monographs, describing the results of research projects which are relevant to our project. I had also underestimated the cost of a sociologist, and more particularly of the necessity of some assistants to help with the research.

I am accordingly resubmitting the application, but have added what I believe to be are sufficient funds. If it turns out that there is available more sociological data than I presently believe, it may be that the submission continues to be on the low side, and I accordingly would like to reserve the privilege of asking at a later date for a small supplement of the funds requested herein. In my original submission I asked for a total of \$17,000 for the cost of the three stages of the project outlined therein. My revised estimate increases this amount by \$6,500. I am therefore asking for \$23,500 for the three stages of the project. I have increased stages two and three \$500 each, and stage one I have increased \$5,500 as a result of my discussions with the sociologist.

In my original letter, I indicated on page four that I was in the process of selecting competent academic personnel to undertake the project. At this stage of the project I propose the lawyer consultant for the sociological and economic part of the project to be Professor William Hogan, of Cornell Law School. At a later time we propose also to use Professor William Warren, of the Law School of the University of California, at Los Angeles. For the economic research project described in my letter, which is now underway, I have secured the help of Professor Robert Johnson, of the Graduate School of Business Administration, at Michigan State University. For the sociolo-

gist for stage one of the project, and also for his consultive capacities in stages two and three, I propose to employ, if funds are available, Assistant Professor Terence Hopkins of Columbia University. If, for any reason, there must be a change in the personnel suggested above, I will, of course, consult with you and Dr. Brim.

No item has been included in the budget for publication. Ideally, a publishable monograph should result from this project. Since, as I understand it, the Russell Sage Foundation has facilities of its own for publication, it goes without saying that the Foundation should have the first right to publish anything publishable from the project submitted. If, for some reason, the Foundation decides not to publish the monograph, Mr. Hopkins will, of course, be permitted by us to publish if he wishes, and if publication does not result from either of these sources, the National Conference of Commissioners will then consider whether it wishes to publish the monograph. We will, of course, use the monographs and the results of research in connection with the work of our special committee preparing comprehensive legislation in the consumer credit field.

I am attaching hereto a copy of my letter of February 5, 1964, which outlines the project as I see it at this time, and the project for which we are requesting funds from the Russell Sage Foundation. As indicated above, the attached letter has been modified by this letter in the sense that the funds requested have been increased, and the proposed personnel have now been selected. I am also attaching to this letter copies of a statement which I prepared for the meetings of the Special Committee of the Commissioners, and also a copy of a pamphlet explaining the history and work of the National Conference of Commissioners on Uniform State Laws.

Sincerely yours,

ALLISON DUNHAM,  
*Executive Director.*

Exhibit 28

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS,  
*February 5, 1964.*

MR. LEONARD S. COTTRELL,  
*Russell Sage Foundation,  
230 Park Avenue, New York, N.Y.*

DEAR MR. COTTRELL: Last November I spoke to Mr. Donald Young, at the suggestion of Professor Harry Jones, about a project of the National Conference of Commissioners on Uniform State Laws to draft comprehensive legislation in the field of consumer credit. At that time, the question whether the Conference would proceed with such a large project was not decided. Mr. Young suggested that when our plans were more firm that I should indicate to you certain areas, particularly in the preliminary planning stage of the project, where we needed financing and submit such areas to your Foundation for consideration of a possible grant to the National Conference of Commissioners on Uniform State Laws.

I am enclosing with this letter a mimeographed copy of a statement which I prepared for the meetings, which the Special Committee of the Commissioners have been having, and which also indicates the necessity of large scale financing and the sources from which we hoped to receive funds. It now appears reasonably clear that for the cost of drafting itself we will be able to obtain funds "without strings" from various members of the industries involved in supplying credit to consumers. For obvious reasons, it is important that there be some nonindustry funds in the support of the project, and it appears to me that we will be able to get some funds for this purpose from non-industry sources. In this letter I am asking the Russell Sage Foundation for money to help us complete the preliminary planning phases of the project. It is my personal opinion that it is extremely important for the Russell Sage Foundation to participate in this new approach to consumer credit. In a real sense of the word, the Russell Sage Foundation created this industry, and more than that, its use of "field studies" and other nonlawbook research in the early part of this century has set the pattern for a great deal of law research since that time. I do hope that the Russell Sage Foundation can see its way clear to help us with the preliminary planning.

I am also enclosing a pamphlet which describes the National Conference of Commissioners on Uniform State Laws. Perhaps, the most significant information in this pamphlet for your purposes is the reference to the fact that the National Conference is an organization of state officials and has a ruling from the Internal Revenue Service that contributions to the organization are tax deductible and exempt, even though the organization drafts and promulgates legislation for adoption by the states.

By this letter, I am asking your Foundation for about \$17,000 for the purposes of preliminary planning in undertaking research leading to the preparation of a Uniform Act on Consumer Credit. We envisage the preliminary planning to be in three stages and to supplement the research which has either been completed by others or is now under way for the National Conference of Commissioners. The present situation of research in the field of consumer credit is this: the American Bar Foundation has prepared and made available to the National Conference of Commissioners on Uniform State Laws (before publication) a comprehensive collection and analysis of all of the existing legislation concerned with consumer credit, including but not limited to the small loan laws originally initiated by the Russell Sage Foundation. There is being prepared for the Conference a similar analysis by an economist of all of the existing economic literature and research in the field of consumer credit. Analysis of the available information in the legal literature, and the economic literature, and research is accordingly either substantially completed or well under way.

Collection and analysis of a similar type is needed of the research which has been undertaken in sociology and in social welfare work concerning the poor and other sociological problems, which may be relevant to our problem of consumer credit. While the structure of the proposed uniform act cannot be determined definitely until the completion of the preliminary planning, it is highly likely that drafting will be concerned with one or more topics in the following phases of the consumer credit process:

(1) The prenegotiation phase—activities such as advertising designed to place the consumer and credit supplier in contact with each other.

(2) Negotiating phase—the process in which the consumer and credit institution work out and agree upon terms of a specific credit arrangement, limited by whatever maximum terms existing legislation imposes.

(3) Formalizing phase—reduction of the terms agreed upon to a form and the manner prescribed by statute in which the form must appear to the consumer and credit institution, and regulations of signature by the consumer and delivery of a copy to the consumer.

(4) Performing phase—concerned with such matters as the privilege of prepayment, the requirement of receipts for the consumer; the privilege of the credit supplier to assign the credit to another credit supplier; the regulation of the documents to be delivered to the consumer on full performance of the contract.

(5) Collecting or liquidating phase—consideration of the remedies available on default such as repossession, garnishment, wage earner bankruptcy and wage assignments.

(6) Statutory enforcement phase—sanctions to observe the regulatory statute.

Most of the existing statutory material is concentrated in phases 2, 3 and 6. We suspect that much of the existing economic research will be found in phases 2 and 5, concerned, for example, with the problems of the cost of supplying credit and the profits of credit suppliers, particularly of the profits of the marginal supplier. We propose to

find out what sociological research has been undertaken which is relevant to all of the phases listed above, and any others if there should be others. For example, sociological research concerned with consumer behavior may, on analysis, give insight helpful in drafting legislation. We propose to analyze both the published sociological material and the material available, perhaps under the guise of "market research" in the offices of such suppliers of credit as Household Finance, Beneficial Finance and Sears Roebuck. We believe that we will be able to get access to these private studies. For the purpose of collecting and analyzing the sociological material, we believe we will need \$4,000 to compensate the sociologist doing the analysis, and a legal consultant to help direct his analysis, and to pay the cost of typing, and any transportation to the sources of the materials which may be necessary. This is stage one of the preliminary planning as we envisage it.

Stage two proceeds with the material collected from the law, economic and sociological resources. This stage consists of the preparation by a lawyer, economist and sociologist of a monograph outlining a recommended scope and structure of a proposed act in the field of consumer credit based on an analysis of the three separate papers previously prepared, and a monograph which points out the policy decisions which must be made by the National Conference in resolving any of the problems disclosed by the literature. This monograph would also point out the areas where the existing and available research seems to be inadequate, and it would recommend types of economic and other social science research, which has not been undertaken and which would be of major importance as an aid in drafting new legislation. As we envisage this report, it would formulate problems to the solution of which well constructed sociological or economic experiments might contribute. For stage two of the preliminary planning, we estimate that we will need \$8,500 to compensate the law professor, economist and sociologist in preparing this monograph, to finance one or two meetings of these three persons, and to pay the cost of duplicating enough copies to be made available for the third stage of the preliminary planning part of the consumer credit project.

The third stage would be a meeting or conference of the special committee of the National Conference of Commissioners on Uniform State Laws in charge of drafting consumer credit legislation, the lawyer economist and sociologist reporters mentioned in the preceding paragraph, and experts in the field from among consumers counsel of various state governments, labor unions, settlement houses or other welfare agencies, banks, personal finance companies, small loan companies, credit unions, and retail stores using revolving credit where the monograph previously prepared would be considered. As a result of this conference or meeting, the special committee of the Commissioners and the draftsmen would then prepare a statement outlining the areas they propose to cover in drafting legislation and recommending additional research directed toward finding answers or insights to specific problems. For this stage of the project the National Conference of Commissioners on Uniform State Laws needs \$4,500 to cover the cost of transportation and attendance at the meeting, preparation of notes and a report of the meeting, and the cost of duplicating the necessary copies of the statement resulting from the meeting.



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The time schedule for the project would be to complete the three stages not later than October 1. We will commence work on stage one almost immediately. Stage two should be begun in June, if not before, and completed as soon thereafter as possible. Ideally, we would like to complete stages one and two so that the Conference referred to in stage three could be held in conjunction with the Annual Meeting of the National Conference of Commissioners on Uniform State Laws in New York City from August 3 to August 8. For various reasons, such as duplicating time and the difficulty of securing additional hotel accommodations in New York for the advisers not otherwise attending the Bar Association meetings in New York, it may be advisable to postpone this meeting of advisers until September.

The process of selecting competent academic personnel for the project is now under way. As Executive Director of the project, I have been obtaining necessary information and consulting with my colleagues in the world of law professors on which to make recommendations to the special committee of the Conference. For the lawyer and economist members of the panel of reporters, we are, at the moment, actively considering Professors William Hogan of Cornell Law School, and William Warren of the Law School of the University of California at Los Angeles, and Robert Johnson of the Graduate School of Business Administration at Michigan State University. Professor David Caplovitz of the National Opinion Research Center and the Department of Sociology of the University of Chicago, and Professor Hans Zeisel of the Law School of the University of Chicago, are helping the Director prepare a list of possible sociologists for that part of the project. At the moment, we have no list of names to report, but are proceeding to prepare one.

To summarize: For the three stages of the preliminary drafting to be completed by October 1, the National Conference of Commissioners on Uniform State Laws needs \$17,000 to pay the out of pocket cost of the studies and meetings. No sum is included for overhead. Stage one, consisting of the preparation of an analysis of existing sociological literature would cost, we believe, \$4,000. Stage two, the preparation of a monograph outlining what the proposed legislation and research should consist of, would cost \$8,500. Stage three, consisting of a conference of a special committee of the Commissioners, the lawyer economist and sociologist reporter, and experts in the field would cost, we estimate, \$4,500.

If it would be helpful to you for me to supply additional information, I would be glad to do so, and also if it would be helpful, I would be glad to arrange a trip to New York to consult with you. I do hope the Russell Sage Foundation will contribute to this project, which in my opinion will serve the public interest, particularly as part of a much larger program of dealing of some of the problems of poverty and ignorance.

Yours truly,

ALLISON DUNHAM,  
*Executive Director.*

**Exhibit 29**

JANUARY 10, 1964.

**A PROJECT FOR A UNIFORM LAW ON CONSUMER CREDIT**

The National Conference of Commissioners on Uniform State Laws proposes to prepare for submission to the states a uniform or model act or series of acts on all aspects of consumer credit, including retail installment sales, small loans, personal loans, bank loans and usury. The purpose of this memorandum is to submit a proposal for financial aid for this project.

Because of the magnitude of the project, the Conference intends to seek funds from many sources, including members of the financial and business community involved with consumer credit. The project is, however, the responsibility of the Conference and is subject to its control. It will use its regular drafting procedures, which include, for major projects, the appointment of draftsmen, research associates and reporters, who, under the direction of the special committee, will be in charge of the project from research through completion of the final draft to be submitted to the states. The conclusions on which the legislation is based will be those of the Conference of Commissioners on Uniform State Laws. While experts from many groups, including special interest groups will be consulted frequently, the Conference makes the decisions as to the form and content which any proposed legislation takes. While any social science and other research undertaken for this project will be used by the Conference in making decisions about the nature and scope of the legislation, any reports and data will be available for publication either by the Conference or, if the Conference decides not to publish the results of such research, by the persons engaged in the research.

The Conference believes that persons and foundations encouraging research which may be significant in solving major problems of urban living should be interested in this project for it involves an area of law which touches the lives of almost all of the American people. The project should also commend itself to those interested in improving the rights and welfare of the less fortunate members of society. Those interested in developing effective consumer and worker education programs designed to help workers and others adjust more easily to the complexities of urban living should also be interested in both the research necessary for the project and the objective of the project—a simplified and understandable consumer credit law. For the above reasons and for the reason a comprehensive and objective attack on the problems of consumer credit through sound legislation may help the consumer credit industry itself, members of the industry should support the project.

Before outlining the project a few words should be said about the nature of the National Conference of Commissioners on Uniform State Laws and its method of drafting uniform laws.

I. NATURE OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

The National Conference of Commissioners on Uniform State Laws, although housed in the American Bar Center in Chicago, is a complete independent association of state officials, the Commissioners on Uniform State Laws appointed by the governors of each state. It promotes uniformity in state laws on all subjects where uniformity is desirable and practicable and it effectuates this purpose by drafting and proposing uniform laws which are then recommended for general adoption by all states. Contributions or gifts to the Conference are contributions to or for the use of state government for exclusively public purposes and are therefore, according to the Internal Revenue Service, tax exempt or deductible.

The Conference, organized in 1892, is one of the oldest organizations encouraging interstate cooperation. A confusion of laws among the several states presents in many fields a deterrent to the free movement of goods, credit, services, and persons between the states and restrains full economic and social development. Such confusion frequently generates pressures for federal intervention to compel uniformity. The Conference, organized to promote uniformity among the states by voluntary action of each state government, has drafted in the almost seventy-five years of its existence over two hundred uniform laws, many of which have been widely enacted. Probably, the single greatest achievement of the Commissioners is the Uniform Commercial Code promulgated in 1957 and now adopted by twenty-eight states and the District of Columbia. This Act, prepared in cooperation with the American Law Institute and with financial support from the Maurice and Laura Falk Foundation and many financial and commercial interests, consolidates and modernizes a number of earlier Uniform Acts and simplifies and expedites interstate commerce without the intervention of any federal act.

The Conference, however, has not limited its activities to the commercial field. It has drafted uniform and model acts on many problems that might be characterized as social problems of modern urban society. Thus, the list of acts currently available for adoption by the states includes acts on such subjects as adoption, desertion and non-support, criminal extradition, postconviction procedure, acts for the defense of indigent persons in criminal proceedings and acts concerning uniform rules for voting by new residents. Currently the Conference has under consideration the question whether it should draft uniform acts on civil rights, and adequate representation of aged and incompetent individuals in the assertion of small claims to pensions and other similar payments.

The drafting procedures of the Conference and the nature of the Conference itself tend to encourage full and non-partisan consideration of controversial subjects. The governors of the states have appointed lawyers, judges, and law school professors as Commissioners

so that a wide representation of the legal profession is secured among the Conference personnel. With respect to drafting the Conference has always emphasized active participation by the Commissioners themselves. If the Conference decides to take up a subject, a special committee of state commissioners is appointed to prepare a draft of an act. Sometimes the draft is prepared by a Commissioner, but for longer and more complicated acts such as the proposed Consumer Credit Act, it has been customary to secure the help of expert draftsmen, usually law professors. In addition, the Commissioners seek advisors from experts in the field under consideration. Tentative drafts are not submitted to the Conference for consideration until they have received extensive consideration by the advisors and by the special drafting committee of the Conference. Unless otherwise authorized by the Executive Committee, a draft act submitted to the whole Conference must be discussed and considered section by section by at least two annual meetings before the Conference may decide by a vote of states whether to promulgate the draft as a uniform or model act.

At its Annual Meeting in 1963, the Conference took additional steps to insure full and deliberate consideration of all matters under consideration by the Commissioners. As a result of this meeting, the Conference has appointed an Executive Director to supervise, arrange for and organize necessary research in connection with subjects on which the Conference is considering drafting uniform legislation, and to attempt to bring before the Conference all relevant policy matters involved in any legislation. Professor Allison Dunham, of the Law School of the University of Chicago, is the first to hold the post of Executive Director. He has been a draftsman for the Commissioners for several of their recent acts including part of the Commercial Code. Through his association with the University of Chicago Law School, and through his own research activities, he has acquired a sound knowledge of the use of the research techniques of the behavioral and economic sciences as an aid in legislative drafting. The social science research activities of the Commissioners will, of course, not be limited to the University of Chicago Law School, but the Conference proposes to make use of the economic and other social science research and personnel wherever available.

## II. THE CONSUMER CREDIT PROJECT

As has been stated earlier in this memorandum, the National Conference of Commissioners on Uniform State Laws proposes to prepare for submission to the states a uniform or model act or series of acts on all aspects of consumer credit, including retail installment sales, personal loans, bank loans, and usury. The importance of this project cannot be overstated. The impact of consumer credit on retail sales and production and the consequent impact on the Nation's economy is reflected in the space devoted to consumer credit in almost any economic analysis of the Nation. The total dollar volume of consumer credit in 1963 was approximately \$60,000,000,000, and if residential mortgage debt is added to this figure consumer credit approaches \$200,000,000,000. With the phenomenal increase in the number of families living in single family housing in the past twenty-five years, a larger and larger percentage of society is becoming involved in

acquiring consumer's durable goods, which in another era might have been acquired only by others. According to a Federal Reserve Board survey in 1959, 55 per cent of the Nation's consumers who purchased furniture or major household appliances in 1958 used credit. The users of consumer credit are not limited to middle and upper income buyers. Low income consumers including those receiving public assistance—those earning less than \$6,000—used credit for from 58 to 65 per cent of such purchases. The direct extension of credit to consumers to purchase durable goods brings consumers into contact with suppliers of credit, which, in turn, gives the marginal operators a chance to take advantage of uninformed consumers.

A study by David Caplovitz entitled "The Poor Pay More" (The Free Press, Glencoe, 1963) suggests that the abuses in consumer credit are symptomatic of the major urban problems of adjusting the relationships of immigrants (for example those from Puerto Rico) to a new society and between Negro and White citizens in our population. An attack on the problem of consumer credit can therefore be viewed as a facet in any comprehensive program attacking urban problems; perhaps, as important as research and activity attempting to attack the housing problem, urban education and legal aid for the indigent, all of which are now the concern of foundations and public spirited citizens and business establishments in our society.

In the early 1900's when the Russell Sage Foundation pioneered research and legislative drafting in the field of consumer credit, the volume of consumer credit was less than \$1,000,000,000, and there were almost no financial institutions engaged in lending money to consumers. Retail stores marketed their merchandise either for cash or on a short term open charge account basis. There were few, if any, laws addressed specifically to consumer credit. The then existing legislation was limited to a general usury law in most states applicable to all kinds of credit and to a chattel mortgage law regulating the method of foreclosing or liquidating a defaulted secured debt.

When the Commissioners on Uniform State Laws began drafting in the middle 1940's of a Uniform Commercial Code, in cooperation with the American Law Institute, it was necessary to have an article on secured commercial transactions. By that time, there had been a substantial increase in the number and type of institutions participating in consumer credit and in the number and type of legal devices available for use by the creditor. Retailers, who formerly sold only for cash or on open charge account, now offered also financing arrangements that involved installment payment of the purchase price. There were also small loan companies, largely the creature of the statutes pioneered by the Russell Sage Foundation study. Commercial banks which at an earlier time had limited their consumer credit services to unsecured loans or real estate mortgages on residences, now purchased installment paper from retailers, and in addition were making direct installment loans, secured and unsecured, to consumers; sales finance companies established in the second decade of the 1900's to purchase consumer installment paper taken by automobile dealers were now purchasing all kinds of consumer installment paper for both durable goods and services. Credit unions, first organized in the early 1900's competed with all of the above for the con-

sumers credit business. In the late 1940's building and loan associations, traditionally limited to loans on security of real estate were beginning to encourage consumers to borrow from them for the purchase of durable goods or for the purchase of home improvements.

Of particular significance to the Commissioners on Uniform State Laws in preparing the Uniform Commercial Code was the development of different types of secured credit arrangements to compete with the traditional chattel mortgage. Chattel mortgage legislation which in many states had become too confining to permit use in the merchandising of goods were now supplemented by legislation concerning conditional sales contracts, trust receipts, bailment-leases and many other credit arrangements, some of which differed among themselves only in the proprietary names given to them by their inventors. In Article 9 of the Uniform Commercial Code, the differences in legal and technical form in these different security arrangements were eliminated and lenders and creditors were freed from the straitjackets of earlier chattel mortgage legislation by the establishment of one security device with differences only to meet the needs of different functions of credit.

The draftsmen of the Uniform Commercial Code also observed that in the 1940's the states were beginning to enact laws in the field of consumer credit. Sometimes these laws resulted from efforts of a particular part of the credit industry to escape the straitjacket of rigid statutory limits on rates of interest or charges for the use credit. Frequently these laws also resulted from efforts to eliminate or curtail abuses in the consumer credit fields. Some bills and legislation appeared to be the result of attempts to make the subject a "political football" for legislators looking for a "popular cause." Economists, sociologists and others were beginning to undertake research projects examining various aspects of consumer credit including details of motivation, characteristics of consumer-debtors and the effects of credit on the purchasers. Both the law and the research projects seemed at this time to be in a highly undeveloped state with no clear trend or pattern emerging. The draftsmen of the Uniform Commercial Code recommended to the Commissioners that the Commercial Code, already a massive project, should not be burdened with an area of the law, not only controversial, but in such a state of flux and uncertainty as to defy at that time reasonable classification. Partly for this reason and partly because of the shortage of money, the Commissioners and the American Law Institute accepted the recommendations of the draftsmen that a uniform regulatory law concerning consumer credit be omitted from the Code and for the time being postponed. Accordingly, Article 9 of the Commercial Code attempted only to simplify the general rules concerning rights and duties of secured creditors and debtors.

That this decision was well taken at the time can be seen from the rapid development in numbers and types of law in the states regulating consumer credit since the Commercial Code was drafted. What is now clear to the Commissioners, however, is that the same serious confusion resulting from different forms of credit transaction before the Commercial Code was drafted now exists in the myriad of laws regulating consumer credit. Thus, in some states there may be a general usury law and a secured credit law, but in addition a special

law for installment loans made by banks; another such law for installment loans made by a licensee under a small loan law; and a further law concerning loans made by credit unions. Furthermore, there may be in the same state a special law concerned with installment credit transactions to finance the purchase of automobiles, another law concerned with installment credit to finance the purchase of home improvements and even in the same state a general retail installment sales law which overlaps these others.

When the Committee on Scope and Program of the Commissioners began to reconsider the question whether it should undertake drafting a uniform law in the field of consumer credit, it quickly became obvious that the project was more substantial than the present organization and limited resources of the Commissioners permitted. As a preliminary step, the Conference sought the aid of the American Bar Foundation in undertaking the necessary legal studies and the Foundation has now made available to the Conference a complete survey of the existing legislation on the subject.

It was apparent to the Committee on Scope and Program and to the Special Committee appointed to draft a uniform act on consumer credit that much more was needed in order to have full consideration of all policy matters involved in such a complex topic. A quick examination of the complex regulatory laws passed in many of the states and of some of the literature on the subject would indicate that many of the laws may actually work against the objectives of the legislation. While much of the recent legislation is founded on the belief that the consumer lacks sophistication about credit; that he is ignorant of the complexities of commercial and credit law; that he is psychologically and economically in an inferior bargaining position when he enters upon credit negotiations it would appear that much of the legislation is drafted without any clear understanding of the "cost" of supplying credit. Furthermore, the legislation in many cases reflects lack of discernment as to the characteristics of consumers who are psychologically or economically in an inferior bargaining position and the characteristics of persons who supply goods services and credit to this level of society. As a result of a failure to give discriminating consideration to these problems many regulatory schemes do not give thought to the impact of the scheme on transactions of consumers and creditors who are not participants in the arena where abuses and over-reaching occur. For example, have we adequately considered the "full disclosure" aspects of some of these laws in light of marketing practices of some merchandisers in order to determine whether regulation of credit, rather than regulation of merchandising is the best way to attack the observed abuses? On a much simpler level, have we considered whether larger and blacker type at the beginning of the credit contract or at its end communicate to the consumer that which the sponsors of the legislation think essential for him to make a rational judgment?

Another important area where information is either inadequate or not fully analysed concerns the "cost" of credit. Much of the existing legislation takes the form of a special exception to an ancient usury law and permits various categories of lenders to charge for credit more than the ancient rate, but still within some statutorily

imposed maximum. Do we know what the impact of this maximum is on the availability of credit for various types of consumers? On the amounts actually charged the consumer, if there is competition for the consumers merchandising and credit business? Is there a need for different statutory maximums for different methods of supplying credits? Are there any criteria determining where competitive forces will not produce a charge for credit less than the statutory maximum? Why is it, that for some kinds of credit sales such as the sales of new automobiles or farm machinery the market rate for the "cost" of credit seems to be less than the statutory maximum, but for other types of consumer credit transaction the market effective rate tends to be that of the statutory maximum?

A quick examination of the multitudinous legislation in the subject also indicates that inadequate consideration has been given to the most effective and efficient way of enforcing the regulatory laws without at the same time "drying up" reputable sources of credit. These and other questions must be examined by the draftsmen before any decision about what to recommend for legislation can most rationally be made.

The Conference needs funds with which to undertake the project of studying consumer credit and drafting legislation to meet the needs for legislation. The Conference has already appointed a drafting committee of Commissioners entitled "Special Committee on Retail Installment Sales, Consumer Credit, Small Loans, and Usury." This Committee has the following membership:

Alfred A. Buerger, Esq., Chairman, 1525 Marine Trust Building, Buffalo 3, New York.

Walter D. Malcolm, Esq., 458 Federal Street, Boston 10, Massachusetts.

George R. Richter, Jr., Esq., 458 South Spring Street, Los Angeles 13, California.

Dean Russell N. Sullivan, College of Law, University of Illinois, Urbana, Illinois.

William H. Wood, Esq., 210 Walnut Street, Harrisburg, Pennsylvania.

The Executive Director of the Conference working with this Special Committee will endeavor to secure from among competent academic personnel, lawyers, economists and sociologists who will be "co-reporters" in charge, in the first instance, of evolving the framework of the proposed legislation; of analysing the existing economic and sociological surveys relevant to the consumer credit project; and recommending additional research where this appears to be necessary.

There has been a substantial amount of research work done in the field of consumer motivation and comprehension and in the field of describing the characteristics of consumers who appear to need protection against abuse. There has also been a considerable amount of research work done as to the cost of credit. An urgent task for the draftsmen therefore is to examine this literature with an eye as to what it contributes to decision making about the nature and scope of legislation on the subject. To the extent that this existing research should be found to be inadequate, specially designed research projects should be undertaken to provide the necessary information.



The Commissioners believe that the research activities of the economic and sociological disciplines have proceeded so far that compilation and analysis of the results of existing research rather than the commencement of new original research projects may be sufficient to enable the Commissioners to identify the problems clearly and to formulate the needed policy conclusions. At a minimum, an analysis of existing material will help determine whether new research expressly undertaken as an aid to legislative drafting must be undertaken.

If further research is necessary, the Conference will employ competent researchers or, if funds are available, the Conference will make use of such research organizations as the Bureau of Applied Social Research at Columbia University, the National Bureau of Economic Research, the National Opinion Research Center at the University of Chicago, and the Survey Research Center at the University of Michigan.

While such research is proceeding, the co-reporters will proceed to set forth for consideration by advisory committees and Commissioners the basic policy issues for which conclusions must be reached in order to proceed with drafting. Before presentation of these issues to the Conference as a whole, the special committee, the advisory committees and the draftsmen will have numerous meetings in which an attempt is made to clarify the issues and to reduce the real issues of conflict to a minimum.

A key factor, therefore, in the drafting procedure of the Commissioners will be the provision of adequate funds for the appointment and assembly of one or more advisory groups to advise the reporters and the special committee both on policy matters and on practical details of operation of the industries involved. The advisory committees will consist of individuals from banks, finance companies, retail installment sellers, small loan companies, credit unions, consumers' organizations and representatives in order to acquaint the Commissioners with the differing points of view and in order to iron out, if possible, areas of apparent conflict where consensus can in reality be obtained. These advisory committees will meet regularly with the draftsmen and the special committees of the Conference.

The target for asking the Conference to approve finally a draft law for submission to the states is the Annual Meeting in 1966, in time for the major legislative year of 1967. The ability of the Conference to meet this time schedule depends on the adequacy of the funds which the Conference is able to secure.

To recapitulate: The Conference believes that a nonpartisan legislative attack on the problem of consumer credit should be viewed as an effort worthy of financial support both because of the importance of consumer credit to the economy of the United States and because of the importance of reducing or eliminating opportunities for abuse and overreaching from the anxieties and insecurities which at best are associated with the efforts of an urban worker and his family to advance in providing for their material wants.

ALLISON DUNHAM,  
Executive Director, National Conference of Commissioners on  
Uniform State Laws, American Bar Center, 1155 East  
Sixtieth Street, Chicago, Illinois.

Exhibit 30

JULY 18, 1952.

Re: IT:TS:EO.

FV.

Facts Forum, Inc.

Exemption Application.

COMMISSIONER OF INTERNAL REVENUE,  
*U.S. Treasury Department,*  
*Washington, D.C.*

SIR: We transmit herewith exemption application of Facts Forum, Inc. on U.S. Treasury Department Form No. 1023, and other information and materials hereinafter listed, as requested in your letter of January 7, 1952. Facts Forum is a nonpartisan, nonprofit organization for adult education. Its purpose is to conduct an orderly study of the art of living and the science of government. It does this through the medium of small forum study groups, periodic polls posing the questions for study and debate, and a free circulating library.

The small study groups, called forums, meet once or more each month to study and discuss the questions submitted in the periodic polls. Each forum conducts its own meetings, decides the particular questions it will study, and arranges for its own speakers and debators. The forums are composed of recommended maximum memberships of 49 or less—small enough to encourage discussion and participation on the part of each member, yet large enough to provide diversification in opinion and experience. Each forum meets in a place of its own selection, e.g., in homes, schools, churches, court houses, city halls, office buildings, civic centers, etc. The public is invited to all forums meeting in public places. All questions are discussed as fully as the time permits. Most meetings last approximately two hours. Everyone is encouraged to join in the discussion and give everyone else the benefit of his study and research on the subject and opinions derived therefrom. A description of a forum meeting may be found in an article appearing at page 18 of the April 23, 1952 issue of Pathfinder Magazine attached hereto as Exhibit "D-4". Facts Forum does not attempt in any manner to influence the vote or study on any of the questions submitted in the poll or on any other question.

A more complete statement of the organizational structure of Facts Forum and its educational program will be found in the Prospectus attached hereto as Exhibit "D-1".

The periodic polls lend an overall integrating and coordinating influence to the program, as well as to provide an invaluable service to our law makers. Copies of the polls will be found in Exhibits "H-1" through "H-4" attached hereto; and the results thereon will be found in the Facts Forum NEWS attached hereto as Exhibit "F-1".

The third leg of Facts Forum's educational program is its free circulating library. Facts Forum does not endorse any of the facts or opinions contained in any of the books in the library but makes such books available to the public to provoke thought and encourage additional reading on the subjects discussed therein. Such books afford the participants a point of departure for their study and research on many of the questions submitted in the polls. A list of the books in the library is attached hereto as "Exhibit "G-1". The circulation system for such books is explained in the insertions therefor, attached hereto as Exhibits "G-2" through "G-4".

Lists of magazines and other periodicals subscribed to by Facts Forum are attached hereto as Exhibits "G-5", "G-6", and "G-7".

Dan Smoot, Facts Forum coordinator, has a fifteen minute program over the Texas Quality Network at 9:45 p.m. each Friday night, which is rebroadcast by 30 additional stations. On each program Mr. Smoot discusses the respective sides of a question submitted in the poll, impartially devoting one half of the allotted time to relating the arguments advanced by those supporting one side of the question and using the other half to relate the arguments advanced by those supporting the other side of the question. Transcripts of such programs, mailed out each week to those who request them, are attached hereto as Exhibit "I".

Facts Forum's awards program is explained on the leaflets attached hereto as Exhibits "E-1" and "E-2". The recipients of such awards are announced in each issue of the Facts Forum NEWS, Exhibit "F-1", to which reference has hereinabove been made.

The names of the officers of Facts Forum, forum conductors and the salaries paid to each are listed on Exhibit "B", attached hereto. Only the coordinators and secretaries receive salaries from Facts Forum.

Additional and miscellaneous information, which may be pertinent and helpful, is also included in the brochure attached hereto.

Very truly yours,

ROBERT H. DEDMAN,  
*President.*

Exhibit 31

U.S. TREASURY DEPARTMENT,  
OFFICE OF THE DIRECTOR OF INTERNAL REVENUE,  
*Dallas, Tex., October 5, 1953.*

MR. ROBERT H. DEDMAN,  
*President, Facts Forum, Inc.,  
730 Mercantile Securities Building,  
Dallas, Tex.*

DEAR MR. DEDMAN: I have been directed by the National Office of the Internal Revenue Service to make an investigation of the activities of Facts Forum, Inc. with a view to determining whether or not the organization is entitled to retain its exempt status under Sec. 101(6), Internal Revenue Code and Sec. 29.101(6)-1 of Regulations 111.

To supplement the information you have previously submitted, would you please furnish the following items?

Copies of Facts Forum News issues from the beginning of the publication through September 30, 1953 except Vol. 1, issues 2, 3, 4, 6, 7, and 8 which were previously submitted.)

A list of the books and periodicals presently available in the Facts Forum library.

The last detailed statement of income and expenses in the file is for the period ended June 30, 1952. Would you therefore furnish a similar statement for the period since June 30, 1952?

From our telephone conversation of today I understand that transcripts of most of your radio and television programs are published in Facts Forum News.

If possible, I would like to secure for transmission to the National Office transcripts of all programs presented through September 30, 1953 which were not published in Facts Forum News. I enclose herewith a list of transcripts which were previously filed.

I have prepared the above list of desired information in accordance with our telephone conversation of today. If you will let me know when you have assembled these items, I will call on you at your office.

Very truly yours,

GORDON S. MOORE,  
*Internal Revenue Agent.*

*Radio Transcripts—Copies Previously Filed*

1951: <sup>1</sup>	Station or network	1952: <sup>1</sup>	Station or network
October 5	WFAA.	January 4	WFAA.
October 12	WFAA.	February 8	TQN.
October 19	WFAA.	February 15	TQN.
November 2	WFAA.	February 22	TQN.
November 9	WFAA.	February 29	TQN.
November 16	WFAA.	March 7	TQN.
November 23	WFAA.	March 14	TQN.
November 30	WFAA.	March 28	TQN.
December 7	WFAA.	April 4	TQN.
December 14	WFAA.	April 11	TQN.
December 21	WFAA.	May 2	TQN.
December 28	WFAA.	May 23	TQN.
		June 6	TQN.
		June 13	TQN.
		June 20	TQN.
		June 27	TQN.
		July 4	TQN.

<sup>1</sup> The year is not shown on some of the transcripts but apparently they covered the latter part of 1951 and the first half of 1952.

**Exhibit 32**

FACTS FORUM,  
*Dallas, Tex., October 9, 1953.*

U. S. TREASURY DEPARTMENT,  
*Office of the Director of Internal Revenue,  
2101 Pacific Avenue,  
Dallas, Tex.*

(Attention: Mr. Gordon S. Moore, Internal Revenue Agent).

DEAR MR. MOORE: We are transmitting herewith the following items requested in your letter of October 5, 1953. Such materials will supplement those previously submitted by us under cover letter dated July 18, 1952.

Materials transmitted herewith:

1. Copies of Facts Forum NEWS—Vol. I, Nos. 5, 8, 9, 10, 11, 12, 13, 15. Vol. II, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9.
2. A list of the books and periodicals presently available in the Facts Forum library.
3. Copies of Facts Forum, Inc., Balance Sheets dated September 30, 1952 and August 31, 1953, copy of Statement of Receipts and Disbursements for year ended September 30, 1952, and copy of Statement of Receipts and Disbursements for eleven month period ending August 31, 1953.
4. Individual radio transcripts dated July 11, 18, August 1, 8, 15, 22, 29, September 5, 12, 1952, and numbered 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55 through 66.
5. Individual TV transcripts Nos. 3, 4, 6 through 16.

Transcripts of the other Facts Forum radio and TV programs are included in the aforementioned copies of the Facts Forum NEWS submitted herewith.

Believing that we have furnished all requested and that these materials will bring your file on our operations down to date, we remain

Very truly yours,

By R. H. DEDMAN,  
*President.*

Exhibit 33

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
DISTRICT DIRECTOR,  
*Dallas, Tex., June 24, 1958.*

In Re: Fiscal Year(s) ended: September 30, 1956.

FACTS FORUM, INC.,  
*715 Mercantile Bank Building,  
Dallas, Tex.*

GENTLEMEN: Our recent examination of your tax liability for the year(s) indicated above discloses that no change is necessary to the tax reported. Accordingly, the return(s) will be accepted as filed.

I want to compliment you on the care which you have shown in the preparation of your return(s).

Sincerely yours,

ELLIS CAMPBELL, Jr.,  
*District Director.*

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Exhibit 34

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
DISTRICT DIRECTOR,  
*Baltimore, Md., September 28, 1962.*

LIFE LINE FOUNDATION, INC.,  
620 11th Street NW.,  
Washington, D.C.

GENTLEMEN: During the recent examination of your tax liability, the adjustments shown on the attached statement were proposed. You did not agree with those marked with an (\*).

If you have since decided to accept these adjustments, we would appreciate your notifying the conferee whose name and address are shown below.

In the event you still do not agree to the adjustments, we would like to arrange an informed conference to give you an opportunity to discuss these adjustments further and to submit additional or supporting information. A member of our staff would represent this office at such a conference and he will have full authority to modify the proposed adjustments to the extent warranted by law and regulations on the basis of the information submitted.

If you would like such a conference, please telephone or write within ten days from the date of this letter to the conferee assigned. He will schedule the conference for a mutually convenient time and place.

We would appreciate your submission of a brief informal statement of your position, with supporting information, in advance of the conference. Although not required, such a written statement would assist the conferee in resolving the issues. If necessary, you may request additional time for submitting such a statement when you contact the conferee to arrange for the conference.

If you desire you may be accompanied by anyone having knowledge of the facts who can furnish information in support of your position. However, if you want to be represented by an attorney or an agent (whether or not you are personally present), he must be enrolled to practice before the Treasury Department and he must file with the conferee a power of attorney, in duplicate, authorizing him to act for you. If more than one taxable year is involved, an exact copy of the power of attorney should be furnished for each year.

If within the ten days you do not agree to the findings or request an informal conference, you will be furnished a report of the proposed adjustments and a notice giving you thirty days within which you may submit a formal protest.

Very truly yours,

LOUIS KAPLAN,  
*Conference Coordinator.*



Name and address of conferee: Mr. Clarence W. Fulcher, Internal  
Rev. Bldg., Room 1038, 12th & Constitution Ave., Washington 25, D.C.  
Telephone number: Worth 4; extension 4333.

FORM 2808 (Rev. 11-7-60)

Exhibit 35

PEAT, MARWICK, MITCHELL & Co.,  
CERTIFIED PUBLIC ACCOUNTANTS,  
*Dallas, Tex., January 28, 1963.*

Re Life Line Foundation, Inc., 620 Eleventh Street NW., Washington, D.C.

DISTRICT DIRECTOR OF INTERNAL REVENUE,  
*12th and Constitution Avenue, Washington, D.C.*

(Attention: Mr. Clarence W. Fulcher).

DEAR SIR: Reference is made to a conference held in the Internal Revenue Service Building, Room 1038, at 10:00 A.M., Tuesday, November 20, 1962, in which the following were present:

For the Internal Revenue Service:

Mr. Clarence W. Fulcher, Conferee.  
Revenue Agent Santos.

For Life Line Foundation, Inc.:

Mr. Don Patterson, Director.

Mr. Ralph B. Shank, Mr. Clark W. Breeding, Mr. George M. Terry, Attorneys in Fact.

The conference was arranged at the request of Life Line Foundation, Inc., (Life Line), in response to a ten-day letter from the office of the District Director of Internal Revenue, Baltimore 2, Maryland, dated September 28, 1962, in which the Revenue Agent recommended: that the tax exemption granted under Section 501(c)(3) as an educational organization be revoked since it is deemed that the organization fails to meet the definition of "educational" as defined in Section 1.501(c)(3)-1(d)(3) of the Regulations.

Upon the completion of the conference, Mr. Clarence W. Fulcher requested that Life Line submit a brief in support of their contentions before February 1, 1963. Attached is the brief on the questions discussed prepared by Mr. Ralph B. Shank, attorney.

Should there be any question as to the favorable disposition of this case, the representatives of Life Line would like an opportunity to discuss further any questions that the Conferee might raise.

Very truly yours,

CLARK W. BREEDING,  
*Attorney-in-Fact for Life Line Foundation, Inc.*

Copies to:

Mr. Ralph B. Shank, Mercantile Securities Building, Dallas, Tex.  
Mr. Don Patterson, Director, Life Line Foundation, Inc., Washington, D.C.  
Mr. George Terry, 512 American Security Building, Washington, D.C.

**Exhibit 36**

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
DISTRICT DIRECTOR,  
*Baltimore, Md., March 8, 1963.*

LIFE LINE FOUNDATION, INC.,  
620 11th Street NW.,  
Washington, D.C.

GENTLEMEN: Your organization (formerly Facts Forum, Inc.) was previously granted exemption from tax under the provisions of section 101(6) of the Internal Revenue Code of 1939 (corresponding to section 501(c)(3) of the Internal Revenue Code of 1954).

After an examination of the activities of your organization, a representative of this office recommended that your exemption be revoked. An informal conference was granted with respect to the matter and the conferee sustained the findings of the examining officer.

The recommendations of the examining officer and the conferee have been carefully reviewed and approved by this office.

The matter will be referred to our National Office for consideration. You will be granted a hearing in that office prior to any issuance of an adverse ruling.

Very truly yours,

IRVING MACHIZ,  
*District Director.*

Cc: George M. Terry,  
Peat, Marwick, Mitchell & Co.,  
512 American Security Building,  
Washington, D.C.

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Exhibit 37

LIFE LINE FOUNDATION, INC.

NAMES, ADDRESSES AND OCCUPATIONS OF DIRECTORS AT THE CLOSE OF EACH OF THE  
YEARS 1951 THROUGH 1962

<i>Name</i>	<i>Year</i>	<i>Occupation</i>
<i>1951</i>		
Hal B. Barnes, Jr.-----	Dallas Power & Light Co.	
Robert H. Dedman-----	Attorney.	
Mary E. Emison-----	Secretary.	
Sam H. Field-----	Attorney.	
Mrs. Sue McCrary-----	Secretary.	
Robert B. Gossett-----	Salesman.	
Marguerite Tankersley-----	PBX Operator.	

<i>1952</i>		
Jack Dale-----	Businessman.	
Hal B. Barnes, Jr.-----	Above.	
Warren Gilbert-----	Bank Officer.	
Sam H. Field-----	Above.	
Mrs. Sue McCrary-----	Secretary.	
Robert B. Gossett-----	Above.	
Robert H. Dedman-----	Above.	

<i>1953</i>		
Jack Dale-----	Above.	
Mrs. E. P. Lamberth-----	Housewife and Civic Leader.	
Warren Gilbert-----	Above.	
Joe W. Nash, Jr.-----	Accountant.	
Mrs. Sue McCrary-----	Above.	
Robert B. Gossett-----	Above.	
Robert H. Dedman-----	Above.	

<i>1954</i>		
Same as 1953 Board		

<i>1955</i>		
Same as 1954 Board		

<i>1956</i>		
Same as 1955 Board		

<i>1957</i>		
Same as 1956 Board		

1958

C. H. Dragert.....	Businessman.
Edward R. Maher.....	Automobile Dealer.
Earle Cabell.....	Businessman.
Allen White.....	Businessman.
Dr. Ridings Lee.....	Physician.
William F. Billings.....	Attorney.
John W. Mayo.....	Businessman.

1959

Same as 1958 Board

1960

C. H. Dragert.....	Above.
Edward R. Maher.....	Above.
H. L. Hunt.....	Businessman.
James B. Kuykendall.....	Salesman.
Dr. Ridings Lee.....	Above.
Henry Clay*.....	Businessman.
Mrs. Dorothy Franey Langkop.....	Housewife and Civic Leader.
Dr. Milford O. Rouse.....	Physician.
Mrs. Robert Fitch.....	Housewife and Civic Leader.

1961

C. H. Dragert.....	Above.
Edward R. Maher.....	Above.
H. L. Hunt.....	Above.
James B. Kuykendall.....	Above.
Dr. Dan R. Sutherland.....	Physician.
Henry Clay.....	Above.
Mrs. Dorothy Franey Langkop.....	Above.
Dr. Milford O. Rouse.....	Above.
Mrs. Robert Fitch.....	Above.

1962

C. H. Dragert.....	Above.
Edward R. Maher.....	Above.
Yale B. Griffiths.....	Attorney.
James B. Kuykendall.....	Above.
Jerome M. Fullenwider.....	Businessman.
Henry Clay.....	Above.
Mrs. Dorothy Franey Langkop.....	Above.
Dr. Milford O. Rouse.....	Above.
Mrs. Robert Fitch.....	Above.

\*All Board members were residents of Dallas, Texas, except Mr. Henry Clay, a resident of Shreveport, Louisiana.

Exhibit 38  
LIFE LINE FOUNDATION, INC.

NAMES AND ADDRESSES OF THE OFFICERS OF THE FOUNDATION AT THE CLOSE OF EACH OF THE YEARS 1951 THROUGH 1962				
<i>Year</i>	<i>President</i>	<i>Vice-President</i>	<i>Secretary</i>	<i>Treasurer</i>
1951--	Robert H. Dedman-----	Robert B. Gossett-----	Hal B. Barnes-----	Hal B. Barnes.
1952--	do-----	Jack Dale-----	Warren Gilbert-----	Warren Gilbert.
1953--	do-----	do-----	do-----	Joe Nash.
1954--	do-----	do-----	do-----	Do.
1955--	do-----	do-----	do-----	Do.
1956--	do-----	do-----	do-----	Do.
1957--	do-----	do-----	do-----	Do.
1958--	C. H. Dragert-----	John W. Mayo-----	Edward R. Maher-----	Edward R. Maher.
1959--	do-----	do-----	do-----	Do.
1960--	Henry Clay*-----	C. H. Dragert-----	do-----	Do.
1961--	do-----	do-----	do-----	Do.
1962--	Mrs. Dorothy Franey Langkop-----	do-----	Yale Griffis-----	Yale Griffis.

\*All officers were residents of Dallas, Texas, except for Mr. Clay, a resident of Shreveport Louisiana.

## Exhibit 39

## LIFE LINE FOUNDATION, INC. (FORMERLY FACTS FORUM, INC.)

## SCHEDULES OF THE FOUNDATION'S LOANS AND NOTES PAYABLE DURING THE COURSE OF THE YEARS 1951 THROUGH 1962

All of the Foundation's loans payable were evidenced by notes, the Foundation never having issued any bonds or mortgages. All notes, except as otherwise indicated below, were payable to the order of First National Bank in Dallas, a national banking corporation doing business in Dallas, Texas. Funds obtained under these loans were negotiated through regular banking channels and the funds obtained under the loans were used to defray operating expenses of the debtor.

## A. Notes payable to First National Bank in Dallas:

Serial number	Date of note	Date due	Interest rate, percent	Amount	Date paid or renewed
(1)	10-28-58	4-28-59	4	\$25,000.00	4-28-59 renewed
(2)	2-5-59	8-5-59	4	5,000.00	6-5-59 renewed
(3)	4-28-59 (renewal of #1)	10-28-59	4	25,000.00	10-28-59 renewed
(4)	6-5-59 (renewal of #2)	9-5-59	4 1/2	5,000.00	9-3-59 renewed
(5)	8-5-59	2-5-60	4 1/2	20,000.00	2-5-60 renewed
(6)	9-3-59 (renewal of #4)	12-2-59	4 1/2	5,000.00	12-2-59 renewed
(7)	10-28-59 (renewal of #3)	4-28-60	5	25,000.00	4-28-60 renewed
(8)	12-2-59 (renewal of #6)	8-2-60	5	5,000.00	6-2-60 renewed
(9)	2-5-60 (renewal of #5)	8-5-60	5	20,000.00	8-5-60 renewed
(10)	4-28-60 (renewal of #7)	10-28-60	5	25,000.00	10-28-60 renewed
(11)	6-2-60 (renewal of #8)	12-2-60	5	5,000.00	12-2-60 paid
(12)	8-5-60 (renewal of #9)	2-6-61	5	20,000.00	1-9-61 \$750.00 paid 1-17-61 \$750.00 paid 2-6-61 \$3,500.00 paid 2-6-61 remainder renewed
(13)	10-28-60 (renewal of #10)	4-28-61	5	25,000.00	3-7-61 \$750.00 paid 4-10-61 \$750.00 paid 4-17-61 \$8,500.00 paid
(14)	2-6-61 (renewal of #12)	8-7-61	4 1/2	15,000.00	5-30-61 \$750.00 paid 6-18-61 \$750.00 paid
(15)	4-28-61 (renewal of #13)	10-28-61	4 1/2	15,000.00	7-26-61 \$5,000.00 paid 8-31-61 \$750.00 paid 10-30-61 \$2,750.00 paid 10-30-61 remainder renewed
(16)	8-7-61 (renewal of #12)	2-7-62	4 1/2	15,000.00	10-31-61 \$750.00 paid 11-9-61 \$750.00 paid 12-13-61 \$750.00 paid 12-29-61 \$12,750.00 paid
(17)	10-30-61 (renewal of #15)	4-30-62	4 1/2	5,000.00	12-29-61 paid

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B. \$5,400.00 loan to Life Line Foundation, Inc., from H. L. Hunt, Dallas, Texas, evidenced by promissory note for \$5,400.00, dated September 16, 1960, and paid in full on May 5, 1962.

## Exhibit 40

## SCHEDULE 1 (PLEASE TYPE OR PRINT)

Life Line Foundation, Inc. (Formerly Facts Forum, Inc.)—Contributions received

Donor  (1)	Year ending 9/30 (2)	Contributions received			Total (5)
		Cash (3)	Other property (please describe fully) (4)		
Bright Star Foundation, Inc., Dallas-----	1959	\$4,250.00	None-----	\$4,250.00	
Woffard Cain, Mercantile Building, Dallas-----	1960	12,500.00	do-----	12,500.00	
Gulf Oil Corp., Houston-----	1955	100.00	do-----	100.00	
	1952	8,864.70	do-----	8,864.70	
	1953	5,000.00	do-----	5,000.00	
Gulf Oil Corp., Pittsburgh-----	1953	9,000.00	do-----	9,000.00	
H. R. Hayes, H. R. Hayes Lumber Co., Post Office Box 1461, Monroe, Louisiana-----	1954	2,000.00	do-----	2,000.00	
A. G. Hill, Chapel Hill Gas System, Dallas-----	1953	5,000.00	do-----	5,000.00	
H. L. Hunt, 700 Mercantile Bank Bldg., Dallas-----	1951	47,500.00	do-----	47,500.00	
	1952	137,000.00	do-----	137,500.00	
	1953	180,500.00	do-----	180,500.00	
	1954	674,000.00	do-----	674,000.00	
	1955	1,224,000.00	do-----	1,224,000.00	
	1956	600,000.00	do-----	600,000.00	
	1957	65,000.00	do-----	65,000.00	



N. B. Hunt, 700 Mercantile Bank Bldg., Dallas.	1952	35,000.00	do.	35,000.00
Stuart Hunt, Empire Drilling Company, 1507 Mercantile Bank Bldg., Dallas.	1954	100.00	do.	100.00
Dina F. Lee, Flowerland, Chamblee, Georgia.	1954	105.00	do.	105.00
Lone Star Steel Co., Dallas.	1954	200.00	do.	200.00
W. K. Manning, Fidelity Union Life Bldg., Dallas.	1954	100.00	do.	100.00
George E. Mercer, T. E. Mercer Teaming & Trucking Contractor, 920 North Main Street, Fort Worth.	1954	500.00	do.	500.00
National Geophysical Co., 8800 Lemmon Avenue, Dallas.	1954	100.00	do.	100.00
Ohio Oil Co., Findlay, Ohio.	1953	6,500.00	do.	6,500.00
Placid Oil Co., Shreveport, Louisiana.	1953	5,000.00	do.	5,000.00
Querbes & Bourquin, Shreveport, Louisiana.	1954	200.00	do.	200.00
A. L. Reed, 4400 Westway, Dallas.	1954	100.00	do.	100.00
Eldred J. Robinson, Dallas.	1960	9,883.82	do.	9,883.82
Caroline H. Sands, 3546 Caruth, Dallas.	1954	10,000.00	do.	10,000.00
Sun Oil Co., Dallas.	1953	6,500.00	do.	6,500.00
Joe C. Thompson, Southland Corp., 228 North Haskell, Dallas.	1954	100.00	do.	100.00
James Ralph Wood, Pres., Southwestern Life Insurance Co., Dallas.	1954	100.00	do.	100.00

## Exhibit 41

## SCHEDULE 2 (PLEASE TYPE OR PRINT)

Life Line Foundation, Inc. (formerly Facts Forum, Inc.)—Receipts from subscriptions to Facts Forum News

Purchaser of subscriptions (1)	Year ending 3/30 (2)	Receipts from subscriptions			Number of subscriptions purchased by each person or organization listed in column 1	Name and address of each person or organi- zation receiving subscriptions to Facts Forum News as a result of each pur- chaser's pay- ments <sup>1</sup>	Term of the subscription received by each person or organization listed in column 7 <sup>1</sup>	
		Cash (3)	Other property (please describe fully) (4)	Total (column 3 + column 4) (5)			Beginning date (8)	Expiration date (9)
Acme Steel Co., Riverdale Station, Chicago 27, Ill.	1955	\$574.00	None-----	\$574.00				
Leo Adler, Baker, Oreg-----	1955	750.00	do-----	750.00				
American Snuff Co., Mem- phis, Tenn.	1956	250.00	do-----	250.00				
Baker Oil & Tool Co., Box 2274, Terminal Annex, Los Angeles, Calif.	1955	200.00	do-----	200.00				
Harry Bass Drilling Co., 1403 Magnolia Building, Dallas, Tex.	1955	150.00	do-----	150.00				
Bell Transportation Co., Post Office Box 8598, Houston, Tex.	1956	150.00	do-----	150.00				
L. M. Berry & Co., Hulman Building, Dayton, Ohio.	1954	100.00	do-----	100.00				
Blue Bell, Inc., E. W. Weant, Vice-President, Drawer C-2, Greensboro, N.C.	1954	3,596.00	do-----	3,596.00				
		100.00	do-----	100.00				

Blanton Drilling Co., 2323-24 Gulf Building, Houston, Tex.	1955	100.00	do.	100.00
The Brewster Co., Shreveport, La.	1955	1,000.00	do.	1,000.00
Brinkerhoff Drilling Co., Denver, Colo.	1955	300.00	do.	300.00
Zack K. Brinkerhoff, Brinkerhoff Drilling Co., Continental Building, Dallas, Tex.	1954	250.00	do.	250.00
Enoch Brown, Memphis, Tenn.	1955	125.00	do.	125.00
E. L. Bruce Co., Box 397, Memphis, Tenn.	1955	100.00	do.	100.00
Brunner Seal Co., Chicago, Ill.	1955	276.00	do.	276.00
G. H. Burnham, Tri-State Oil Tool Co., Inc., Post Office Box 5588, Bossier Branch, Shreveport, La.	1954	200.00	do.	200.00
J. P. Butler, Midland, Tex.	1955	100.00	do.	100.00
C. & H. Transportation, Post Office Box 5976, Dallas, Tex.	1955	100.00	do.	100.00
H. E. Chiles, Jr., 12121 Cuthbert, Midland, Tex.	1955	200.00	do.	200.00
C. Reid Clatterbuck, Bowles Livestock Commission Co., Omaha, Nebr.	1954	100.00	do.	100.00
Commercial Print and Letter Service, 1015 North Hawkins, Dallas, Tex.	1955	372.00	do.	372.00
Continental National Bank, Fort Worth, Tex.	1954	372.00	do.	372.00

See footnote at end of table.

*Life Line Foundation, Inc. (Formerly Facts Forum, Inc.)—Receipts from subscriptions to Facts Forum News—Continued*

Purchaser of subscriptions (1)	Year ending 9/30 (2)	Receipts from subscriptions			Number of subscriptions purchased by each person or organization listed in column 1 (6)	Name and address of each person or organi- zation receiving subscriptions to Facts Forum News as a result of each pur- chaser's pay- ments (7)	Term of the subscription received by each person or organization listed in column 7 (8)	
		Cash (3)	Other property (please describe fully) (4)	Total (column 3+ column 4) (5)			Beginning date (8)	Expiration date (9)
Continental Supply Co., Dallas, Tex.	1954	\$10,000.00	None	\$10,000.00				
	1955	12,500.00	do	12,500.00				
	1956	12,500.00	do	12,500.00				
	1955	12,442.00	do	12,442.00				
Cotwell Manufacturing Co., 234 South Fairview Ave- nue, Spartanburg, S.C.	1955	100.00	do	100.00				
Ed Cox Foundation, Mag- nolia Building, Dallas, Tex.	1954	100.00	do	100.00				
C. M. Crawford, Jr., 9606 Santa Monica Boulevard, Beverly Hills, Calif.	1955	250.00	do	250.00				
John F. Cuneo, 2242 South Grove Street, Chicago, Ill.	1955	200.20	do	200.20				
Devin-Adair Co., 23 East 26th Street, New York, N.Y.								

Dresser Industries, Republic Bank Building, Dallas, Tex.	1956	189.00	do	189.00
R. B. Dresser, 15 Westminster, Providence, R.I.	1955	250.00	do	250.00
Glen W. Drewett, Jena, La.	1955	100.00	do	100.00
Duke Transportation Co., Post Office Box 536, Jena, La.	1954	100.00	do	100.00
	1955	750.00	do	750.00
	1956	600.00	do	600.00
Empire Drilling Co., Dallas, Tex.	1955	1,345.00	do	1,345.00
Exchange Bank and Trust, El Dorado, Ark.	1955	100.00	do	100.00
First National Bank, Dallas, Tex.	1954	18,000.00	do	18,000.00
	1955	10,000.00	do	10,000.00
	1956	5,000.00	do	5,000.00
First National Bank, Magnolia, Ark.	1955	100.00	do	100.00
Foundation, Inc., Wichita, Kans.	1955	100.00	do	100.00
G. & H. Specialty Co., Post Office Box 1362, Shreveport, La.	1955	400.00	do	400.00
	1956	250.00	do	250.00
Gardner & Denver Co., Post Office Box 5957, Dallas, Tex.	1955	100.00	do	100.00
Philip Geist, 227 Ernie Street, Detroit, Mich.	1955	100.00	do	100.00
W. L. Goldston, Oil & Gas Building, Houston, Tex.	1955	500.00	do	500.00
B. A. Hardy, Post Office Box 1237, Shreveport, La.	1954	100.00	do	100.00
H. R. Hayes, Monroe, La.	1955	120.00	do	120.00

See footnote at end of table.

*Life Line Foundation, Inc. (formerly Facts Forum, Inc.)—Receipts from subscriptions to Facts Forum News—Continued*

Purchaser of subscriptions (1)	Year ending 9/30 (2)	Receipts from subscriptions			Number of subscriptions purchased by each person or organization listed in column 1	Name and address of each person or organization receiving subscriptions to Facts Forum News as a result of each purchaser's payments <sup>1</sup>	Term of the subscription received by each person or organization listed in column 7 <sup>1</sup>	
		Cash (3)	Other property (please describe fully) (4)	Total (column 3 + column 4) (5)			Beginning date (8)	Expiration date (9)
E. J. Hudson, Hudson Engineering Corp., Houston, Tex.	1954	\$1,500.00	None	\$1,500.00				
Hunsaker Trucking Co., Post Office Box 97, Carrollton, Tex.	1955	146.00	do	146.00				
H. L. Hunt, 700 Mercantile Bank Building, Dallas, Tex.	1955	100,000.00	do	100,000.00				
Hunt Oil Company, 700 Mercantile Bank Building, Dallas, Tex.	1954	841.00	do	841.00				
	1955	1,793.37	do	1,793.37				
	1956	3,236.50	do	3,236.50				
A. W. Hutchings, Suite 522, Fidelity Union Life Building, Dallas, Tex.	1954	200.00	do	200.00				
Ingersoll Corp., Shreveport, La.	1955	500.00	do	500.00				
Jones Apothecary, Inc., 2400 Rise Boulevard, Houston, Tex.	1955	100.00	do	100.00				

P. G. Lake, Inc., Tyler, Tex.	1955	1,000.00	do	1,000.00
Charles H. Lawrence, Jr., Post Office Box 218, Lake Charles, La.	1954	2,000.00	do	2,000.00
Lawton Oil Corp., Magnolia, Ark.	1955	100.00	do	100.00
Levingston Shipbuilders, Post Office Box 411, Orange Tex.	1955	488.00	do	488.00
Lewis Sound Films, 71 West 45th Street, New York 19, N.Y.	1956	387.00	do	387.00
Lion Oil Co., El Dorado, Ark.	1955	100.00	do	100.00
Lone Star Cement Corp., New York, N.Y.	1955	707.00	do	707.00
Lone Star Steel Co., Post Office Box 8087, Dallas, Tex.	1955	250.00	do	250.00
R. L. Lorel, First National Bank Building, Dallas, Tex.	1954	200.00	do	200.00
Gene McAdams, John Clay and Co., Live Stock Commission, Chicago, Ill.	1955	5,000.00	do	5,000.00
McAlester Fuel Co., Magnolia, Ark.	1955	5,100.00	do	5,100.00
John A. McGuire, President Three States Natural Gas Co., 17th Floor, Corrigan Tower Building, Dallas, Tex.	1954	100.00	do	100.00
Memphis Clearing House, Memphis, Tenn.	1955	300.00	do	300.00

See footnote at end of table.

*Life Line Foundation, Inc. (formerly Facts Forum, Inc.)—Receipts from subscriptions to Facts Forum News—Continued*

Purchaser of subscriptions (1)	Year ending 9/30 (2)	Receipts from subscriptions			Number of subscriptions purchased by each person or organization listed in column 1 (6)	Name and address of each person or organi- zation receiving subscriptions to Facts Forum News as a result of each pur- chaser's pay- ments <sup>1</sup> (7)	Term of the subscription received by each person or organization listed in column 7 <sup>1</sup>	
		Cash (3)	Other property (please describe fully) (4)	Total (column 3+ column 4) (5)			Beginning date (8)	Expiration date (9)
Memphis Manufacturing Co., 712 North Camiado Street, Memphis, Tenn.	1955	\$200.00	None	\$200.00				
Mercantile National Bank, R. L. Thornton, Chair- man of the Board, Dallas, Tex.	1954	500.00	do	500.00				
The Mercantile National Bank Dallas, Tex.	1955	500.00	do	500.00				
Mid-Continent Supply Co., Fort Worth, Tex.	1954	2,000.00	do	2,000.00				
Milwhite Mud Sales Co., 1092 M & M Building, Houston, Tex.	1956	100.00	do	100.00				
Clifford Mooers, Walnut Spring Farm, Route 4, Lexington, Ky.	1954	246.00	do	246.00				
Adrian Moore, 2512 Gulf Building, Houston, Tex.	1955	100.00	do	100.00				
Woodroe Moore, Post Office Box 5006, Bossier City, La.	1955	121.00	do	121.00				



Murphy Corporation, El Dorado, Ark.	1954	270.00	do.	270.00
National Geophysical Co., Inc., 8800 Lemmon Avenue, Dallas, Tex.	1954	414.00	do.	414.00
The New Seven Falls Co., Colorado Springs, Colo.	1955	200.00	do.	200.00
Padgett Printing Co., Dallas, Tex.	1955	100.00	do.	100.00
Panola Pipeline Co. (Caroline Hunt Trust Estate), 700 Mercantile Building, Dallas, Tex.	1955	5,000.00	do.	5,000.00
Peuro Drilling Co., 418 Market Street, Shreveport, La.	1955	500.00	do.	500.00
Placid Oil Co., Shreveport, La.	1955	1,008.00	do.	1,008.00
Railway Express Agency, New York, N.Y.	1955	303.00	do.	303.00
Ralston Feed Yard, 531 Exchange Building, Omaha, Nebr.	1955	920.00	do.	920.00
J. B. Razier, Jr., 941 Jefferson, Memphis, Tenn.	1955	400.00	do.	400.00
Reef Fields Gasoline Corp., J. R. Butler, President, Post Office Box 1661, Big Spring, Tex.	1954	1,360.00	do.	1,360.00
		6,000.00	do.	6,000.00
		8,129.00	do.	8,129.00
		8,000.00	do.	8,000.00
		120.00	do.	120.00
		200.00	do.	200.00
		100.00	do.	100.00
		200.00	do.	200.00
		100.00	do.	100.00

See footnotes at end of table.

*Life Line Foundation, Inc. (formerly Facts Forum, Inc.)—Receipts from subscriptions to Facts Forum News—Continued*

Purchaser of subscriptions (1)	Year ending 9/30 (2)	Receipts from subscriptions			Number of subscriptions purchased by each person or organization listed in column 1 (6)	Name and address of each person or orga- nization receiving subscriptions to Facts Forum News as a result of each pur- chaser's pay- ments (7)	Term of the subscription received by each person or organization listed in column 7	
		Cash (3)	Other property (please describe fully) (4)	Total (column 3+ column 4) (5)			Beginning date (8)	Expiration date (9)
Reef Fields Gasoline Co., 2100 Esperson Building, Houston, Tex.	1955	\$100.00	None	\$100.00				
The Republic National Bank, Dallas, Tex.	1955	1,000.00	do	1,000.00				
J. E. Rosenlind, Baker Oil Tools, Inc., Post Office Box 2274, Terminal An- nex, Los Angeles 54, Calif.	1954	150.00	do	150.00				
A. H. Rowan, 19th Floor, Fair Building, Fort Worth, Tex.	1954	200.00	do	200.00				
Caroline H. Sands, 3546 Caruth, Dallas, Tex.	1955	15,000.00	do	15,000.00				
Sayles Biltmore Bleachery, Saylesville, R.I.	1955	250.00	do	250.00				
Sayles Finishing Plant, Saylesville, R.I.	1955	250.00	do	250.00				
Clarence Scharbauer, Jr., Midland, Tex.	1955	162.00	do	162.00				
Seaboard Oil & Co., Inc., Dallas, Tex.	1955	383.00	do	383.00				

Sears, Roebuck & Co., Chicago, Ill.	1955	1,000.00	---do---	1,000.00
Cruger T. Smith, Inc., Dallas, Tex.	1956	1,000.00	---do---	1,000.00
Forest M. Smith, San Antonio, Tex.	1955	1,500.00	---do---	1,500.00
L. C. Smith, Alabama Power Co., Birmingham, Ala.	1955	200.00	---do---	200.00
Standard Oil Co., Chicago, Ill.	1954	138.00	---do---	138.00
Standard Oil Co. of Indiana, 910 South Michigan Avenue, Chicago, Ill.	1955	1,000.00	---do---	1,000.00
Standard Oil & Gas Co., Tulsa, Okla.	1956	780.00	---do---	780.00
Sunset News Co., 125 North Westmoreland, Los Angeles, Calif.	1955	100.00	---do---	100.00
Sweeney Bros. Tractor Co., Fargo, N. Dak.	1955	283.59	---do---	283.59
Temple Hargrove, Box 395 Fildell, La.	1955	250.00	---do---	250.00
Texas Bank & Trust Co., Dallas, Tex.	1956	330.00	---do---	330.00
Tri State Oil Co., Box 5588, Shreveport, La.	1955	100.00	---do---	100.00
Triangle Refineries, Inc., Houston, Tex.	1955	300.00	---do---	300.00
Unite Tool Co., Post Office Box 1383, Shreveport, La.	1954	100.00	---do---	100.00
U. S. Steel Corp., Oil Well Supply Division, Post Office Box 478, Dallas, Tex.	1955	1,500.00	---do---	1,500.00
V. J. Waters, Dallas, Tex.	1954	500.00	---do---	500.00
	1955	420.35	---do---	420.35

See footnote at end of table.

*Life Line Foundation, Inc. (Formerly Facts Forum, Inc.)—Receipts from subscriptions to Facts Forum News—Continued*

Purchaser of subscriptions (1)	Year ending 9/30 (2)	Receipts from subscriptions			Number of subscriptions purchased by each person or organization listed in column 1 (6)	Name and address of each person or organi- zation receiving subscriptions to Facts Forum News as a result of each pur- chaser's pay- ments <sup>1</sup> (7)	Term of the subscription received by each person or organization listed in column 7 <sup>1</sup>	
		Cash (3)	Other property (please describe fully) (4)	Total (column 3+ column 4) (5)			Beginning date (8)	Expiration date (9)
Welx Jet Services, Inc., 1400 East Berry Street, Fort Worth, Tex.	1954	\$100.00	None	\$100.00				
Wilson Supply Co., 1412 Maury Street, Houston, Tex.	1955	100.00	do	100.00				
Wilson Supply Co., 1301 Conty Street, Houston, Tex.	1954	300.00	do	300.00				
Wilson Supply Co., Post Office Drawer 19, Hous- ton, Tex.	1955	300.00	do	300.00				
Morris K. Womack, Hous- ton, Tex.	1956	300.00	do	300.00				
General R. E. Wood, Sears Roeback, Inc., Chicago, Ill.	1956	100.00	do	100.00				
	1954	1,000.00	do	1,000.00				

<sup>1</sup> Please submit the information for columns 7, 8, and 9 in duplicate on a separate sheet and identify as "Answers to columns 7, 8, and 9, Schedule 2."

**Exhibit 42**

**REPORTING ON POSSIBLE VIOLATIONS OF LAWS OF THE UNITED STATES**

Officers and employees of the Service are required to be alert to, and to report on indications of offenses against the United States regardless of the Federal statute involved. Official instructions on this were set forth in Manual Supplement 93G-33, dated July 17, 1961, and these instructions are presently reflected in section 9382.7 of the Internal Revenue Manual, as follows:

**9382.7 Information Concerning Alleged Offenses Against the United States.**

In the performance of their official duties, officers and employees shall be particularly alert for indications of offenses committed against the United States whether they pertain to violations of the Internal Revenue Code or to violations of other Federal statutes. Information concerning alleged violations of the Internal Revenue Code shall be reported through channels in accordance with existing procedures. Upon receipt of information indicating violations of Federal laws which are not administered by the Internal Revenue Service, officers and employees, other than Alcohol and Tobacco Tax personnel, shall set forth in a memorandum the pertinent facts concerning the suspected violation and promptly forward such memorandum through channels to the Assistant Regional Commissioner (Intelligence) for referral to the Director, Intelligence Division. The memorandum shall contain the name, address and any known aliases of the alleged violator together with a summary of available information with respect to the indicated offense, including names and addresses of persons, if any, who can furnish further details in connection with the matter.

Upon receipt of information indicating a violation of a federal law not administered by the Internal Revenue Service, the Director, Intelligence Division, immediately notifies the Attorney General, in writing, of the name of the alleged violator, and the general nature of the violation, informing him at the same time that further information and cooperation will be provided by the Service upon receipt of a request made in accordance with statutory requirements.

The attached Information Notice 64-34 is a recent example of how the procedure is implemented from time to time. (The Directives referred to on page 2 of the Information Notice for the Appellate, Audit, and Collection Divisions reflect the same requirements as those for the Intelligence Division in section 9382.7 of the Internal Revenue Manual.)

[No. 64-34]

U.S. TREASURY DEPARTMENT,  
INTERNAL REVENUE SERVICE,  
*August 13, 1964.*

INFORMATION NOTICE

*Reporting Violations of Section 1952 of Title 18, U. S. Code, Involving  
State Law Bribery Violations*

The purpose of this Information Notice is to call attention of appropriate personnel in the Appellant, Audit, Collection and Intelligence Divisions to the contents of a letter, dated May 18, 1964, to the Commissioner from Mr. Herbert J. Miller, Jr., Assistant Attorney General, as quoted below:

DEPARTMENT OF JUSTICE,  
*Washington, May 18, 1964.*

HON. MORTIMER M. CAPLIN,  
*Commissioner of Internal Revenue,  
Washington, D.C.*

DEAR COMMISSIONER: I am writing to you in connection with a phase of the enforcement of Section 1952 of Title 18, U.S. Code, in which I think the Internal Revenue Service may be in a position to be of even greater assistance to us.

Section 1952, as you know, prohibits the travel in interstate commerce or the use of a facility in commerce to promote, manage, carry on, etc., of a bribery, in violation of the laws of the state in which the bribery occurs or of the United States. While the Internal Revenue Service regularly reports to this Division any violation of a federal statute which may come to its attention in connection with its own investigations, it occurred to me that where a bribery might occur in violation of the laws of a state, the relationship of such criminal conduct to 18 U.S.C. 1952 might not be entirely appreciated since this is a relatively new statute. Whenever as a result of investigations or inquiries conducted by your agents any such course of conduct is disclosed, I would appreciate it if you would have these facts brought to the attention of the Criminal Division so that we may give prompt consideration to our responsibilities under U.S.C. 1952.

Sincerely,

(Signed) HERBERT J. MILLER, Jr.,  
*Assistant Attorney General.*

In reporting a violation of Section 1952, the appropriate personnel of the following Divisions will follow the provisions of the current directives indicated below:

<i>Division</i>	<i>Directive</i>
Appellate Division.....	IRM 8(23)32.
Audit Division.....	IRM 4097.
Collection Division.....	C.R. 51G-16 to Manual Supplement 93G-33, dated July 17, 1961 (principal number previously superseded) and IRM 240-2.02(3)a.(d) and 240-3.02(3)b.
Intelligence Division.....	IRM 9382.7.

D. L. BAEM,  
*Assistant Commissioner (Compliance).*  
(Official Use Only)

## Exhibit 43

Page 5

**FORM 990-A**  
U.S. Treasury Department  
Internal Revenue Service

**RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX**  
Section 501(c)(3) of the Internal Revenue Code

1962

**PART II** For Calendar Year 1962—or other taxable year beginning , 1962, and ending , 19

Part II information required pursuant to Section 5033(b) and other applicable sections of the Internal Revenue Code must be submitted in duplicate as part of your return. This part will be made available to the public.

Legal name of organization Address (number, street, city or town, postal zone, and State)

Please type or print clearly

This return must be filed on or before the 15th day of the fifth month following the close of the annual accounting period. Return must be filed with the District Director of Internal Revenue for the district in which is located the principal place of business or principal office of the organization.

Employer Identification No.

Line No.

1. Gross sales or receipts from business activities. \$

2. Less: Cost of goods sold or of operations (Attach schedule) \$

3. Gross profit from business activities. \$

4. Interest \$

5. Dividends \$

6. Rents \$

7. Royalties \$

8. Gain (or loss) from sale of assets, excluding inventory items (See Instruction 8) \$

9. Other income (Attach schedule.—Do not include contributions, gifts, grants, etc. (See line 17.)) \$

10. Total gross income (lines 1 to 9, inclusive) \$

11. Expenses of earning gross income from column 3, Schedule A. \$

**DISBURSEMENTS MADE WITHIN THE YEAR OUT OF CURRENT OR ACCUMULATED INCOME FOR PURPOSES FOR WHICH EXEMPT, AND ACCUMULATION OF INCOME**

12. Expenses of distributing current or accumulated income from column 4, Schedule A. \$

13. Contributions, gifts, grants, scholarships, etc. (See Instruction 13). need schedule \$

14. Accumulation of income within the year (line 10 less the sum of lines 11, 12, and 13) \$

15. Aggregate accumulation of income at beginning of the year. (\$.....)

16. Aggregate accumulation of income at end of the year. (\$.....)

**RECEIPTS NOT REPORTED ELSEWHERE**

17. Contributions, gifts, grants, etc., received. need schedule if supplied \$

18. Less: Expenses of raising and collecting amount on line 17, from column 5, Schedule A. \$

19. Net contributions, gifts, grants, etc. \$

**DISBURSEMENTS MADE OUT OF PRINCIPAL FOR PURPOSES FOR WHICH EXEMPT**

20. Expenses of distributing principal from column 6, Schedule A. \$

21. Contributions, gifts, grants, scholarships, etc.: (a) Paid out in prior years (\$.....)

(b) Paid out within the year (See Instruction 21). need schedule \$

**Schedule A—Allocation of Expenses (See Instructions)**

1. Item	2. Total	3. Expenses of earning gross income	4. Expenses of distributing income	5. Expenses of raising and collecting principal	6. Expenses of distributing principal
(a) Compensation of officers, etc. need schedule					
(b) Other salaries and wages					
(c) Interest					
(d) Taxes					
(e) Rent					
(f) Depreciation (and depletion) need schedule					
(g) Miscellaneous expenses (Attach sch.)					
(h) Totals		Enter on line 11	Enter on line 12	Enter on line 18	Enter on line 20





**Exhibit 45**

990-A's Not to be copied:

Alumnus and endowment funds or trusts for schools, colleges, etc.  
B'nai B'rith Hillel Foundations  
Community Centers  
D. A. R.  
Employee donation or contribution funds.  
Employee welfare funds.  
Health agencies: Arthritis and Rheumatism Foundation Chapters  
National Fdn. (for Infantile Paralysis) Chapters  
Mental health associations or chapters  
Myasthenia Gravis Fdn., Inc.  
Historical Societies  
Hospitals, clinics, homes for orphans, aged, etc.  
Kiwanis foundations, unless assets over \$100,000  
Libraries  
Museums  
P. T. A.  
Power Squadrons  
Rotary foundations, unless assets over \$100,000  
Scholarship funds - when limited to graduates or students of a particular  
community or for a particular school or college.  
Settlement houses  
Youth agencies: Scouts  
Y M C A - Y W C A  
Y M H A - Y W H A, ETC.

**Exhibit 46**

If called Foundation - make copy of 990-A even though it is a Fund raising  
Foundation - no copy of attachments.

Always look on Statement of Nature of Activities to be sure if its Fund  
Raising.

Under Expenses it might list if it is Fund Raising

Look for Contributions.

The only time to make a copy covering letters is when signed by an individual  
who is an officer or trustee of Foundation.

If printed form from Foundation is attached do not copy, but make note of it  
on Xerox copy.

Always skip gain and loss report from sale of assets. Always line 8 and page  
1 of 990-A.

Do not copy sheet with disbursements and income received.

Do not copy depreciation schedule.

Types to look for:

Foundation, Fund, Trust, Corporation and sometimes Association,  
Societies, Chapters.

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**Exhibit 47**



**U. S. TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE**

Gentlemen:

The Internal Revenue Service is converting its records of organizations exempt under Sections 501(a) or 521 of the Internal Revenue Code so that the records can be maintained and processed on the Service's Automatic Data Processing (ADP) equipment. Processing on ADP will better serve the needs of the Government, exempt organizations, and the general public and will facilitate the preparation of rosters and publications listing exempt organizations, such as the Cumulative List of Organizations Contributions to Which Are Deductible (Publication 78).

Under the authority of Sections 6001 and 6033 of the Internal Revenue Code and regulations issued thereunder, each exempt organization is requested to complete the attached questionnaire and return it in the enclosed pre-addressed envelope within 15 days in order to facilitate this conversion.

It is important to your organization that the questionnaire be filled in completely and accurately, and returned promptly. Please forward this questionnaire immediately to the person authorized to act for the organization named on page 4, should this be necessary. Organizations which are no longer active or are not currently in an exempt status should so note as provided in the general instructions below and return it in the enclosed envelope. Organizations not returning questionnaires will be presumed either inactive or no longer interested in maintaining their tax-exempt status.

Sincerely yours,

*Bertrand M. Harding*

Acting Commissioner

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**GENERAL INSTRUCTIONS**

1. Complete this questionnaire promptly unless your organization:
  - a. Has previously submitted a completed copy of this questionnaire to the Internal Revenue Service.
  - b. Has received a ruling or determination letter from the Service dated after June 30, 1964.
2. If your organization is no longer active or no longer tax exempt, so indicate in item 1 of the questionnaire in lieu of the name and complete item 19 only.
3. The specific instructions are numbered to correspond with the questionnaire. Your answers should relate only to the organization to which this questionnaire is addressed. Use page 4 to provide explanatory information. Attach additional sheets if required.
4. Upon completion, detach and mail the questionnaire in the enclosed pre-addressed envelope.

FORM M-0284 PAGE 1 (8-64)

**SPECIFIC INSTRUCTIONS**

(Please Read All Instructions Carefully Before Completing Questionnaire)

1. Enter in item 1 the complete, unabbreviated name of your organization. *Examples:* American Legion Shaw-Paulin Post Number 241; First Baptist Church Missionary Society.
2. If your organization has been issued an Employer Identification Number, record it in item 2. If not, insert "None."
3. Enter in item 3 the exact address (include ZIP code) of your organization. Whenever possible, use an address which will not change from year to year. If the address given is the business or home address of an individual, also include the name of such individual. *Examples:*

650 E. Main Street c/o John Smith, Treasurer  
Elmville, Arkansas 66666 Elmville, Arkansas 66666

4. Enter in item 4 any name other than that shown in item 1 by which your organization is commonly known. *Example:* Veterans Victory Club.

5. If your organization has received an individual ruling or determination letter from the Internal Revenue Service, check box 1 in item 5. If your organization is covered by a group ruling, check box 2. Enter the date of the ruling or determination letter, if known, in the space provided. If you do not know the basis of your organization's exemption, or if the exemption is on some basis other than a ruling or determination letter, check box 3 and explain on page 4.

6. Enter in item 6 the subsection of the Internal Revenue Code under which your organization is exempt.

7. Table 1 on page 2 is a classification of exempt organizations arranged according to the exemption subsections of the Internal Revenue Code of 1954 and covers all of the specific purposes for which an exempt status is authorized. Select and circle the item or items that best describe your organization. Most organizations will select only one item; however, select all which apply. Then enter in item 7 the line numbers of the selected items. Organizations with exemptions under earlier provisions of law should disregard the subsection numbers shown in Table 1.

8. Check the one box in item 8 which best describes the legal form of your organization. If your organization is not a corporation, a trust, a partnership, or a cooperative, check box 5.

9. If your organization is a foundation, check box 1 or 2 as appropriate in item 9. A private foundation is one organized by an individual, a family, or a corporate or other business undertaking which is substantially supported by such parties.

A public foundation is one supported primarily by contributions from the general public or governmental bodies. If your organization is not a foundation, leave this item blank.

10. If your organization was organized or formed in the United States, its possessions, or its territories, check box 1 in item 10. Otherwise, check box 2.

11. Table 2 on page 4 is a listing of major purposes, activities, operations or types of exempt organizations. Circle any items listed in table 2 which describe the current major purposes, activities, operations or types of your organization. Circle as many items as may apply. Then enter in item 11 the line numbers of the selected items.

12. Enter in item 12 the month in which your organization's accounting year ends.

13. If yours is a central or parent organization of a national, regional, or geographic grouping of organizations, check box 1 in item 13. If yours is an intermediate organization of a national, regional, or geographic grouping of organizations, such as the state headquarters of a national organization, check box 2. If yours is a local affiliate of a national, regional, or geographic grouping of organizations, or an auxiliary which is a local affiliate of a national, regional, or geographic grouping of auxiliaries, check box 3. If yours is an independent organization or independent auxiliary (i.e., not affiliated with a national, regional, or geographic grouping of organizations), check box 4.

14. If yours is a local or intermediate organization, give the full name and address of the central organization in item 14; if not leave this item blank.

15. If yours is a central or intermediate organization, record the number of your local affiliates in item 15; if not, leave this item blank.

16. Check the applicable boxes in item 16 to indicate the returns your organization has filed within the past three years.

17. If your organization filed a group return within the past three years, enter the number of organizations included in your latest return in item 17. Otherwise leave this item blank.

18. Enter in item 18 the city in which is located the District Director's office with which your organization filed its last return. If not required to file a return, enter the city of the District Director's office in which is located your organization's principal place of business (or address).

19. Enter signature, title, and date of signing in item 19.

**TABLE 1—CLASSIFICATION OF EXEMPT ORGANIZATIONS**

Line No.	Classification	Code subsection	Line No.	Classification	Code subsection
010	Government instrumentality	501(c)(1)	090	Voluntary employees' beneficiary association (Nongovernment employees)	501(c)(9)
020	Title-holding corporation	501(c)(2)	100	Voluntary employees' beneficiary association (Government employees)	501(c)(10)
030	Charitable organization	501(c)(3)	110	Teachers' retirement fund association	501(c)(11)
031	Educational organization	501(c)(3)	120	Benevolent life insurance association	501(c)(12)
032	Literary organization	501(c)(3)	121	Mutual ditch or irrigation company	501(c)(12)
033	Organization to prevent cruelty to animals	501(c)(3)	122	Mutual or cooperative telephone company	501(c)(12)
034	Organization to prevent cruelty to children	501(c)(3)	123	Organization like those on lines 120, 121 or 122	501(c)(12)
035	Organization for public safety testing	501(c)(3)	130	Burial association	501(c)(13)
036	Religious organization	501(c)(3)	131	Cemetery company	501(c)(13)
037	Scientific organization	501(c)(3)	140	Credit union	501(c)(14)
040	Civic league	501(c)(4)	141	Other mutual corporation or association	501(c)(14)
041	Local association of employees	501(c)(4)	150	Mutual insurance company or association other than life or marine	501(c)(15)
042	Social welfare organization	501(c)(4)	160	Corporation financing crop operations	501(c)(16)
050	Agricultural organization	501(c)(5)	170	Supplemental unemployment compensation trust or plan	501(c)(17)
051	Horticultural organization	501(c)(5)	180	Apostolic and religious organization	501(d)
052	Labor organization	501(c)(5)	190	Farmers' cooperative	521
060	Board of trade	501(c)(6)			
061	Business league	501(c)(6)			
062	Chamber of commerce	501(c)(6)			
063	Real-estate board	501(c)(6)			
070	Pleasure, recreational or social club	501(c)(7)			
080	Fraternal beneficiary society, order or association	501(c)(8)			

FORM M-0284 PAGE 2 (9-64)

<b>READ THE INSTRUCTIONS ON PAGE 2 BEFORE ANSWERING QUESTIONS</b> (Use reverse side or attach additional sheets if necessary)		<b>FOR INTERNAL REVENUE SERVICE USE ONLY</b>
<b>FOR IRS USE ONLY</b>		
<b>1. COMPLETE NAME OF TAX EXEMPT ORGANIZATION</b>	<b>2. EMPLOYER IDENTIFICATION NUMBER</b>	
<b>3. ADDRESS (STREET, CITY, STATE AND ZIP CODE)</b>		
<b>4. OTHER NAMES BY WHICH ORGANIZATION IS KNOWN (USE REVERSE SIDE IF NECESSARY)</b>		
<b>5. BASIS FOR EXEMPTION</b> 1 <input type="checkbox"/> INDIVIDUAL RULING OR DETERMINATION LETTER    2 <input type="checkbox"/> GROUP RULING    3 <input type="checkbox"/> OTHER		<b>DATE OF LETTER/RULING</b>
<b>6. SUBSECTION OF CODE UNDER WHICH YOUR ORGANIZATION IS EXEMPT:</b>		
<b>7. CLASSIFICATION OF EXEMPT ORGANIZATION (ENTER LINE NUMBERS FROM TABLE 1)</b> (    ) , (    ) , (    ) , (    )		
<b>8. FORM OF ORGANIZATION</b> 1 <input type="checkbox"/> CORPORATION    2 <input type="checkbox"/> TRUST    3 <input type="checkbox"/> COOPERATIVE    4 <input type="checkbox"/> PARTNERSHIP    5 <input type="checkbox"/> ASSOCIATION		
<b>9. TYPE OF FOUNDATION</b> 1 <input type="checkbox"/> PRIVATE    2 <input type="checkbox"/> PUBLIC		
<b>10. PLACE OF FORMATION</b> 1 <input type="checkbox"/> U.S. (INCLUDING POSSESSIONS & TERRITORIES)    2 <input type="checkbox"/> FOREIGN COUNTRY		
<b>11. MAJOR PURPOSES, ACTIVITIES OR OPERATIONS (ENTER LINE NUMBERS FROM TABLE 2)</b> (    ) , (    ) , (    ) , (    )		
<b>12. MONTH IN WHICH ACCOUNTING YEAR ENDS:</b>		
<b>13. AFFILIATION</b> 1 <input type="checkbox"/> CENTRAL    2 <input type="checkbox"/> INTERMEDIATE    3 <input type="checkbox"/> LOCAL    4 <input type="checkbox"/> INDEPENDENT		
<b>14. IF A LOCAL OR INTERMEDIATE, ENTER FULL NAME AND ADDRESS OF CENTRAL</b>		
<b>15. IF CENTRAL OR INTERMEDIATE, ENTER NUMBER OF LOCAL AFFILIATES:</b>		
<b>16. ANNUAL RETURNS FILED</b> 1 <input type="checkbox"/> 990    2 <input type="checkbox"/> 990-A    3 <input type="checkbox"/> 990-C    4 <input type="checkbox"/> 990-P    5 <input type="checkbox"/> 990-T 6 <input type="checkbox"/> 1065    7 <input type="checkbox"/> NONE		
<b>17. IF A GROUP RETURN WAS FILED, ENTER THE NUMBER OF ORGANIZATIONS INCLUDED IN LATEST GROUP RETURN:</b>		
<b>18. CITY OF DISTRICT OFFICE:</b>		
<b>19. SIGNATURE AND TITLE</b>		<b>DATE</b>

ITEM NO.	REMARKS	GIVE ADDITIONAL REMARKS WHICH PERTAIN TO QUESTIONS ON REVERSE SIDE, SHOWING ITEM NUMBERS

TABLE 2—PURPOSES, ACTIVITIES, OPERATIONS OR TYPES OF EXEMPT ORGANIZATIONS

Line No.	Description	Line No.	Description	Line No.	Description
01	Arts (Performing Arts, Fine Arts, etc.)	28	Exhibitions, Fairs, Trade Shows	59	Pension, Profit-Sharing Trust, etc.
02	Advertising	29	Farming	60	Perpetual Care Fund
03	Alumni Activities	30	Federal, State or Local Government Agency	61	Professional Advancement
04	Association of Employees	31	Financial Services	62	Public Safety
05	Association of Employers	32	Fraternity or Sorority	63	Publishing, Radio, TV, etc.
06	Athletics	33	Fund Raising	64	Real Estate Activities
07	Book Store	34	Garden Club	65	Recreation
08	Business Promotion	35	Gifts to Charitable Organizations	66	Religious Institution (Church, Synagogue, etc.)
09	Cafeteria, Restaurant, Snack Bar, Food Services	36	Gifts to Individuals	67	Religious (Other)
10	Camp	37	Handicapped, Aid to	68	Rental of Owned Property
11	Cemetery or Burial Association	38	Health Agency	69	Research and Development
12	Civic Welfare	39	Historical Sites, Historical Records, Preservation of, etc.	70	Retirement Plan
13	Civil Liberties or Rights	40	Hobby Club	71	Royalties, Receipt of
14	Clinic	41	Hospital, Nursing Home, etc.	72	Scholarships
15	Commemorative Organization (Centennial, Monument, etc.)	42	Housing for Aged	73	Senior Citizens or Retirees
16	Commodity Exchange	43	Housing (Other)	74	Services to Members
17	Community Deterioration, Prevention of	44	Humanitarian Activities	75	Sick or Death Benefits to Members
18	Community Fund	45	Indian (Tribe, Cultures, etc.)	76	Social Activities
19	Conservation (Natural Resources, Wildlife)	46	Industrial Development	77	Sports Activities
20	Country Club	47	Insurance	78	Student Activities
21	Credit Reporting	48	International Operations	79	Testing
22	Educational Institution	49	Juvenile Delinquency, Combating of	80	Thrift Shop, Retail Outlet, etc.
23	Educational (Other)	50	Legislative Activities	81	Traffic or Tariff Bureau
24	Emergency or Disaster Aid Fund	51	Library	82	Unemployment Benefits
25	Employees, Welfare of	52	Loans	83	Urban Renewal
26	Employment Assistance, Retraining, Apprenticeship or Vocational Training, etc.	53	Marketing Members' Products	84	Vacation Plan
27	Endowment Fund	54	Medical Care	85	Veterans Activities
		55	Museum	86	Volunteer Firemen's Organization
		56	Nursery	87	Voter Education
		57	Parent or Parent-Teachers Association	88	World Peace, Promotion of
		58	Patriotic Activities	89	YMCA, YMHA, etc.
				90	Youth Activities

### Exhibit 48

[From the New York Times, Sept. 4, 1964]

#### MISUSING C.I.A. MONEY

Representative Wright Patman has disclosed that the Central Intelligence Agency is giving money to, and working through, at least one private foundation. And, if one, there must be others.

The practice ought to stop. Its continuation permits the Communists and the cynical everywhere to charge that American scholars, scientists and writers going abroad on grants from foundations are cover agents or spies for C.I.A. All scholars—especially those involved in East-West exchanges—will suffer if the integrity of their research is thus made suspect. What evidence can American professors or field workers present to prove they are not engaged in underground activities when it is known that the C.I.A. is using its money to subsidize existing foundations, or is creating fictitious ones?

The use of Government intelligence funds to get foundations to underwrite institutions, organizations, magazines and newspapers abroad is a distortion of C.I.A.'s mission on gathering and evaluating information. It means operating behind a mask to introduce governmental direction into cultural and scientific spheres where it does not belong—at least not in a democracy like ours.

Foundations, for their part, have no business accepting such money. They will only end by destroying their reputations as *private* foundations.

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[From Pittsburgh Post Gazette & Sun Telegraph, Sept. 7, 1964]

#### THE ALMS OF CIA

The usually invisible tentacles of the Central Intelligence Agency have now been found in the alms of a private foundation. This latest unmasking of the CIA, by Congressman Wright Patman of Texas, adds one more unsettling chapter to the story of questionable activities by the spy agency. However necessary the gathering of foreign intelligence may be, the CIA's intrusion into policy-making, its reported defiance of higher executive authority on occasion and its secret operations in the domestic field are enough to make citizens wary of its role in a democracy.

According to Representative Patman, the CIA, from 1959 until sometime this year, used the J. M. Kaplan Fund of New York City as a "secret conduit" for channeling funds for an unknown purpose. Whatever the purpose was, the implications of this case are disturbing. Twice during the 1950's district directors of the Internal Reve-



nue Service recommended that the tax exempt status of the Kaplan Fund be revoked. Then in 1960 a third director, after consultation with IRS headquarters in Washington, recommended that the exemption remain in force. Although a spokesman for the IRS said the tax agency had "no arrangement" with the CIA, the IRS was admittedly informed of the CIA's interest in the Kaplan Fund. Meanwhile, the IRS has still not made a final ruling on the Kaplan Fund's tax status, and its investigation of the Fund is continuing.

As chairman of a House Small Business Subcommittee which has been looking into foundation operations, Congressman Patman charged on Aug. 10 that the Kaplan Fund's founder used the foundation to further his business empire. He said the Fund's gross receipts from 1951 through 1963 totaled \$19.3 million, while disbursements came to \$6 million. This week Mr. Patman said the IRS investigation may involve "millions of dollars in tax liabilities."

Without full information on this case, we have no way of judging the validity of the Kaplan Fund's claim to tax exempt status. But we can hardly help wondering in the first place, why the CIA chose a foundation that was under investigation and, second, how the Internal Revenue Service could make an impartial finding on the Kaplan Fund when it knew that the Fund was being used by another government agency for unknown objectives. More important is a still larger question raised by the Kaplan Fund revelation: How can citizens have confidence in the integrity and benevolence of foundations when they suddenly learn that a spy agency has been manipulating a foundation whose organization aims were stated to be "exclusively" charitable and designed "to strengthen democracy at home and abroad through a general program of assistance to benevolent, charitable, educational, scientific and literary activities, with some emphasis on intergroup relations"?

Mr. Patman—who brought this story to light because he thought he had been "trifled with" by the CIA—now seems to be satisfied that his subcommittee need not pursue the CIA trail any farther in this case. The American people, however, cannot be blamed for feeling that they are being "trifled with" until they have a regular congressional watchdog committee to keep an eye on the CIA's devious operations in a more systematic way than is possible with a group such as Mr. Patman's.

### Exhibit 49

[From Evansville (Ind.) Press, Sept. 1, 1964]

#### IT'S TAX MONEY—PUBLIC HAS RIGHT TO EXPECT SOMEBODY KEEP TABS ON CIA

Congressman Wright Patman, in the course of his deep probe of tax-exempt foundations, has given the Central Intelligence Agency some embarrassment.

The congressman turned up information, verified by the Internal Revenue Service, the CIA was giving money to the J. M. Kaplan Fund, a New York foundation. Or, as Mr. Patman put it, the Kaplan Fund was used "as a conduit for channeling CIA funds."

We don't know the purpose of this indirect use of taxpayer money. And probably we don't want to know. We are not anxious to uncover the legitimately secret operations of the CIA which of necessity must be hush-hush.

But Mr. Patman was asking why the CIA was spending tax money with a foundation which has been under intensive investigation by both his congressional subcommittee and by the IRS.

When Mr. Patman first went to the CIA for an answer, he didn't get it, he said.

"I feel like I've been trifled with," he said.

Then, with the heat on, CIA officials met privately with Mr. Patman and apparently convinced him that the matter should not be aired publicly and was of no interest to the subcommittee's investigation.

Two different directors of IRS have recommended that the Kaplan foundation's tax-exempt status be revoked, and IRS is still probing.

It does not necessarily follow that whatever service the Kaplan Fund provided the CIA was not worth whatever CIA paid it. But somebody (not us) should have known all along.

Once again, we say Congress should set up a watchdog committee to keep tabs on CIA and all the other hush-hush agencies. The public doesn't ask what they are doing, but the public has a right to believe that Congress knows what they are doing, and why. This type of system has worked very well with the Atomic Energy Commission, which is partly secret. It is even more important that there be a check on CIA and like agencies.

The more secret an agency, the more liberties it is likely to take—unless it is accountable to somebody who is accountable to the voters.

Exhibit 50

TREASURY DEPARTMENT,  
ASSISTANT SECRETARY,  
Washington, July 17, 1964.

GENTLEMEN: The Treasury Department, in conjunction with its continuing study of the operation of the tax laws, is currently compiling statistics with respect to tax-exempt foundations. While some of the facts which are necessary to complete this study are available from the 1962 return filed by your organization, there are certain items with respect to which we need more information. Accordingly, you are requested to complete each of the questions on the enclosed form and return one copy of the completed form within 30 days to the Office of Tax Analysis, Room 4040, Main Treasury Building, Washington, D.C., 20220.

It will be observed that some of this information is obtainable from the schedules required to be submitted as a part of your annual return. These schedules, however, are located around the country in the operating offices of the Internal Revenue Service and thus are not readily available for this tabulation. For the most part the data requested in this questionnaire were not previously requested.

This questionnaire is intended solely to obtain statistical information and does not constitute an audit of your organization's activities. It should be noted that the completion of this questionnaire does not excuse you from completing the form which you have received (or will shortly receive) from the Internal Revenue Service which is designed to obtain certain non-statistical information which will permit the compilation of a "master list" of exempt organizations. This master list will be placed upon magnetic tape and will be used with automatic data processing equipment to facilitate the administration of the provisions of the tax law dealing with exempt organizations.

The replies to the questions asked on this questionnaire are requested under the authority of sections 6001 and 6033 of the Internal Revenue Code.

Sincerely yours,

STANLEY S. SURREY.

Bureau of Budget Approval  
No. 48-6403  
Expires Dec. 31, 1964.

Tax-EXEMPT FOUNDATION SURVEY

Name-----  
Address-----

Officials, etc.

1. List below the name and position of each official (officer, director, or trustee, etc.), whether or not compensated, of your organization at the end of the period covered by your 1962 Form 990-A. (Please list all officers first, then directors, then trustees, etc.) Use additional sheet if necessary.

	Name	Position	Relationship (see #2 below)		Investment Policy (see #3 below)	
			None	Type	Yes(1)	No(2)
1.	-----	-----	<input type="checkbox"/>	-----	<input type="checkbox"/>	<input type="checkbox"/>
2.	-----	-----	<input type="checkbox"/>	-----	<input type="checkbox"/>	<input type="checkbox"/>
3.	-----	-----	<input type="checkbox"/>	-----	<input type="checkbox"/>	<input type="checkbox"/>
4.	-----	-----	<input type="checkbox"/>	-----	<input type="checkbox"/>	<input type="checkbox"/>
5.	-----	-----	<input type="checkbox"/>	-----	<input type="checkbox"/>	<input type="checkbox"/>

2. For each official listed, indicate by entering the appropriate letter in the column "Relationship—Type" which, if any, of the relationships listed below he bears to the creator of the organization or to a substantial contributor (any person who has contributed \$1,000 or more to the organization). If none, check the column "Relationship—None."

- (a) He is the creator or a substantial contributor.
- (b) He is related by blood, marriage, or adoption to the creator or to a substantial contributor.
- (c) He is an employee of the creator or of a substantial contributor.
- (d) He is an attorney or accountant of the creator or substantial contributor.
- (e) He is an employee of a corporation owned (50 percent or more of voting stock or 50 percent or more of the value of all stock), directly or indirectly, by the creator and/or substantial contributor.
- (f) He is an employee of a partnership or other unincorporated business venture in which the creator and/or substantial contributor owns 50 percent or more of the capital interests or profits interests.
- (g) He is a person who holds 20 percent or more of the voting stock or 20 percent or more of the value of all stock in any corporation in which the creator and/or substantial contributor (and the wife and children of the creator and/or substantial contributor) holds 20 percent or more of the voting stock or 20 percent or more of the value of all stock.
- (h) He is a person who holds 20 percent or more of the capital interests or profits interests in any partnership or other unincorporated business venture in which the creator or substantial contributor (and the wife and children of the creator or substantial contributor) holds 20 percent or more of the capital interests or profits interests.
- (i) He has another significant business relationship with the creator or a substantial contributor.

(If the relationship (i) is indicated, please describe briefly on an attached sheet. Such other significant business relationship would, for example, exist where the official is an employee of a corporation or partnership in which the creator or substantial contributor owns 20 percent or more of the stock or capital or profits interests.)

3. Indicate by checking "yes" or "no" in the "Investment Policy" column whether the individual official was authorized to participate in decisions relating to the handling of investments of your organization, or decisions relating to the total amount of income, contributions, and corpus to be invested.

Question 15 on Form 990-A asks whether or not your organization engaged in certain transactions with the creator of the organization, with a substantial contributor to the organization, or with certain parties related to either the creator or a substantial contributor. The following question (4) asks about such transactions with officials of the organization and certain parties related to such officials and deals only with transactions that were not involved in question 15 on Form 990-A. In answering this question do not take account of any transactions involving individuals who are both creators or contributors (or related to creators or contributors) and officials or related to officials.

4. Transactions with Officers, etc.:

During the period covered by your 1962 Form 990-A, did—

Any of the officials of your organization;

The brothers, sisters, spouses, ancestors, or lineal descendants of the officials;

Corporations owned (50 percent or more of voting stock or 50 percent or more of value of all stock), directly or indirectly, by the officials; or

Partnerships or other unincorporated business ventures in which the officials owned 50 percent or more of the capital interests or profits interests:

- |   | (1)<br>Yes               | (2)<br>No                |
|---|--------------------------|--------------------------|
| (a) Borrow any part of your cash, securities, or other property?  | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Lend any cash, securities, or other property to you?  | <input type="checkbox"/> | <input type="checkbox"/> |
| (c) Have any part of your services or assets (other than compensation for personal services reported on Schedule A of your 1962 Form 990-A) made available to them? | <input type="checkbox"/> | <input type="checkbox"/> |
| (d) Purchase any securities or other property from you?   | <input type="checkbox"/> | <input type="checkbox"/> |
| (e) Sell any securities or other property to you?   | <input type="checkbox"/> | <input type="checkbox"/> |
| (f) Receive any of your cash, securities, or other property in other transactions?  | <input type="checkbox"/> | <input type="checkbox"/> |

If the answer to any of the questions is "yes," attach a detailed explanation. (Please mark this explanation "Schedule 4.")

5. Contributions Received During the Period Covered by Form 990-A for 1962:

(a) Enter the amount of contributions received during the period covered by your 1962 Form 990-A (line 17, page 1). \$-----

(b) Enter the amount of such contributions which were in the form of cash. \$-----

(c) Enter the amount of such contributions which were in the form of stock in any corporation with respect to which, at the end of the period covered by your 1962 Form 990-A, your organization held 10 percent or more of any class or stock. \$-----

6. Market Value of Assets at End of Period Covered by Form 990-A for 1962: (Where no market quotations or detailed valuations are available to establish market value of assets, an approximation will be satisfactory.)

(a) Total Assets \$-----

(b) Corporate Stock \$-----

7. Certain Stock:

(a) During the period covered by your 1962 Form 990-A, did your organization hold 10 percent or more of any class of stock in any corporation? Yes (1) ☐ No (2) ☐

If the answer is "yes," answer question 8 on page 4.

8. If you answered "yes" to question 7, on page 3, answer questions (a) through (e) for each corporation in which your organization held 10 percent or more of any class of stock during this period. If your organization held more than one class of stock in such corporation, answer questions (a) through (e) with respect to each class of stock in which your corporation held 10 percent or more. Note that questions (d) and (e) refer to holdings at the end of the period. If your organization held 10 percent or more during the period but reduced this percentage (even below 10 percent) by sales during the period, answer questions (d) and (e) with reference to the end-of-period holdings. (Use additional sheets if necessary.)

(a) Name of corporation. (Abbreviate) -----

(b) Class of stock held (e.g. common, 6 percent preferred, etc.). -----

(c) Did your organization sell, or otherwise dispose of, any of this stock during the period covered by your 1962 Form 990-A? 1. Yes ☐ 1. Yes ☐ 1. Yes ☐

(Answer "yes" or "no.") 2. No ☐ 2. No ☐ 2. No ☐

(d) End of year holding—For the shares of this class held by your organization at the end of the period covered by your 1962 Form 990-A give—

(i) Book value.	\$-----	\$-----	\$-----
(ii) Market value.	\$-----	\$-----	\$-----
(iii) Approximate percentage of total voting power.	-----%	-----%	-----%
(iv) Approximate percentage of total value of all classes of stock in the corporation.	-----%	-----%	-----%
(v) The total annual cash dividend on shares held at the end of the period.	\$-----	\$-----	\$-----

(e) Give the approximate percentage of the total value of stock in the corporation held at the end of the period covered by your 1962 Form 990-A by the creator and substantial contributors to your organization and their brothers, sisters, spouses, ancestors, lineal descendants; corporations owned (50 percent or more of voting stock or 50 percent or more of the value of all stock), directly or indirectly, by such creator or substantial contributors; and partnerships or other unincorporated business ventures in which the creator or substantial contributor owns 50 percent or more of the capital interests or profits interests. (If this information is unknown and not ascertainable, so indicate.)

-----% -----% -----%

## Exhibit 51

### RECENT CHANGES IN TAX FORMS FILED BY FOUNDATIONS

#### FORM 990-A (ANNUAL INFORMATION RETURN)

##### *Changes made on the 1962 form*

1. Increased disclosure to the public of information concerning foundation activities. Prior to the change in the 1962 Form 990-A, the "public" portion of the return did not contain certain items, such as transactions between the donor and his foundation, which were required to be submitted on the portion of the form used by the Internal Revenue Service for audit and other purposes. In addition, the "public" portion was only available in the district in which the foundation filed its return. Starting with the 1962 form, however, the information which a foundation must supply on the "public" portion of its return includes all the information contained on the "non-public" portion except an itemized list of contributions which it receives. (Requiring the public disclosure of this itemized list is believed to be inconsistent with the statute providing for public disclosure of returns filed by exempt organizations.) In addition, since 1962 foundations must submit two copies of the "public" portion of their Form 990-A's. One copy is retained in the public disclosure files of the district in which the return is filed; the other is transmitted to Washington, D.C., where it is available for public inspection in the National Office of the Internal Revenue Service.

2. A description of property, such as securities, received by foundations as gifts is required. The pre-1962 Form 990-A only required the organization to report the value of contributions it received, without indicating whether the gift was in cash or property. The instructions to the 1962 form were the first to require that where gifts to a foundation of \$100 or more are in the form of property, the description of the property received must be provided on the separate schedule submitted to support the total contributions figure contained on the face of the return. (This schedule is not made public.) This should serve to "flag" gifts of property where it is likely that an inflated valuation may be claimed. Prior to 1962 the foundation was required to indicate persons from whom it received gifts of cash or property of \$100 or more. This requirement is retained.

3. Greater disclosure of gifts of income and principal made by the organization is required. Prior to 1962 an organization was only required to supply a list of organizations and individuals to whom payments of income and corpus were made by the organization in furtherance of its exempt activities. However, the 1962 form was the first to require not only the list of distributees, but also the relationship (if any) of the distributees by blood, marriage, adoption, or employment (including children of employees) to any person or corporation having an interest in the foundation, such as the donor.

4. Breakdown of expenses of distributing income and principal is required. Prior to 1962 the form required a breakdown (into compensation of officers, other salaries, interest, taxes, rent, depreciation, and miscellaneous expenses) of expenses incurred by the organization in (a) earning its income, but did not require a breakdown of the expenses incurred in (b) distributing current or accumulated income, (c) distributing principal, or (d) collecting contributions. Starting in 1962 a breakdown of expenses incurred in (b), (c) and (d) was also required. The instructions in support of this breakdown allow the expenses such as salaries, interest, etc., to be allocated between (a), (b), (c) and (d) on "any reasonable basis".

*Changes made on the 1963 form*

The major change in the 1963 Form 990-A was a requirement that the organization list all of its directors, officers, trustees, etc., and indicate the relationship of such officials by blood, marriage, adoption, or employment to the creator of the organizations, substantial contributors, and corporations controlled by such creator or contributor. This information was designed to aid in determining which foundations are in fact "donor controlled" and which are not.

Our examination of some 1963 returns has indicated that this requirement, which was only included in the instructions, has apparently been overlooked in many cases. Therefore, the 1964 return will probably require the name of each of the organization's officials to be listed on the face of the return, along with the relationship of such officials to the organization's substantial donors, etc. The final decision on this will, however, turn on whether the results of our examination of the Form 990-A's and questionnaires currently being distributed indicate that there is a sufficient correlation between "donor-controlled" foundations and foundations which engage in undesirable practices to justify the use of the limited amount of space on the return for such a list.

*Additional changes*

In the course of our study of this area, including the study of the information which we will obtain from the questionnaires and the Form 990-A's, we may discover additional changes in the Form 990-A which would be helpful in administering the provisions of the tax law dealing with exempt organizations. Such changes will be incorporated in the 1964 Form 990-A.

FORM 1028 (APPLICATION FOR EXEMPT STATUS)

Prior to 1963 the Service's position was that unless an organization qualified as a "public type organization" (an organization with a governing board comprised of a cross section of persons in a community who represent the interests of the community and which derives substantial financial support from the public as opposed to a limited number of organizations or individuals), it was required to actively operate for a period of at least 12 months before filing an exemption application. This position was based on the theory that the Service needed to examine at least one year of the organization's actual operations before it considered itself able to determine whether the organization could be ruled exempt. In December 1963 the Service announced that it would abandon the "12-months" requirement and would issue a ruling in advance of the organization's operations if the organization could describe in sufficient detail its proposed operations in a manner which would permit the Service to conclude whether the organization would be clearly exempt. Following the announcement of this change in position, the form which an organization must submit to obtain a ruling as to its tax-exempt status (Form 1023) was revised so as to require the organization to indicate the activities in which it expected to engage in the future. The new application form is accompanied by an extensive instruction folder designed to clarify the type of information needed to supplement the application and should substantially reduce the requests by the Service to an applying organization for additional information which in the past has been needed to perfect the organization's application.



Exhibit 52

BOARD OF GOVERNORS  
OF THE FEDERAL RESERVE SYSTEM,  
OFFICE OF THE CHAIRMAN,  
Washington, January 17, 1964.

HON. WRIGHT PATMAN,  
*Chairman, Subcommittee Foundation Study, Select Committee on  
Small Business, U.S. House of Representatives, Washington,  
D.C.*

DEAR MR. CHAIRMAN: This is in response to your inquiry of November 12, 1963, concerning possible violation of the Federal banking laws administered by the Board or regulations issued thereunder, arising out of certain financial transactions between Mr. Serge Semenko, an officer and director of the First National Bank of Boston, and the New York-based Baird Foundations. These transactions are described in part 2 of a study of tax-exempt foundations and charitable trusts, published by your Subcommittee under date of October 16, 1963.

On the basis of the facts set forth in the said study, it would appear that the failure of the Baird Foundations to report to the Board, through the Federal Reserve Bank of New York, transactions during fiscal year 1959 involving extensions of credit to Mr. Semenko and others for the purpose of purchasing or carrying securities registered on a national securities exchange may have been a violation of the Board's Regulation U.

Sections 7(a) and 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78) authorize the Board to promulgate regulations for the purpose of preventing excessive use of credit for the purchase or carrying of securities and to require reports from persons subject to such regulations. This statutory authority has been implemented in the Board's Regulation U (12 CFR 221), and pursuant to published rule (12 CFR 221.51) the Board, in 1960, required unregulated lenders (i.e., those other than banks and securities brokers or dealers) who on December 15, 1959, were in the business of extending credit and who in the ordinary course of business extended credit for the purpose of purchasing or carrying securities registered on a national exchange to file, no later than May 15, 1960, a report of such transactions (on Form F.R. 728) during the preceding fiscal year.

From the data contained in your Subcommittee report, it would appear that during the period studied a significant part of the Baird Foundations' activities involved extensions of credit, many of such transactions being for the purchase or carry of listed securities.

Of course, what constitutes "being in the business" of extending credit is a factual determination, to be made in light of all relevant circumstances. Since section 32(a) of the Securities Exchange Act of 1934 places responsibility for dealing with violations of the Act and regulations promulgated thereunder with the Securities and Exchange Commission, determination of whether the Baird Foundations were, in fact, engaged in the business of extending credit would ultimately be a matter for that agency to decide. It appears, however, that such a conclusion would be warranted, and the failure of the Baird Foundations to file reports pursuant to 12 CFR 221.51 would, therefore, seem to constitute a violation of the Board's Regulation U.

The foregoing matter is being referred to the Securities and Exchange Commission for evaluation and appropriate disposition.

From the facts presented in your Subcommittee's report the Board has concluded that, apart from the foregoing, the transactions in question do not appear to conflict with any statutory or regulatory provisions administered by the Board.

Sincerely yours,

WM. McC. MARTIN, Jr.

Exhibit 53

PRELIMINARY REPORT AND STATUS OF INVESTIGATION PREPARED BY  
THE DIVISIONS OF TRADING & MARKETS AND CORPORATION FI-  
NANCE RE DAVID G. BAIRD ET AL. FOR SUBCOMMITTEE No. 1 OF  
THE SELECT COMMITTEE ON SMALL BUSINESS OF THE HOUSE OF  
REPRESENTATIVES

(Submitted to the subcommittee under date of November 30, 1964)

The staff is presently engaged in a comprehensive study and review of certain financial transactions of the Baird Foundations (Foundations)—Winfield Baird Foundation; David, Josephine & Winfield Baird Foundation, Inc.; and Lansing Foundation, Inc. This study was prompted by the findings of the second installment of the Patman Report which dealt at great length with the activities of these Foundations.

Our work has gone through several stages. Initially we reviewed with great care the Patman Report and the Commission's records which pertained to the Foundations' transactions described in the report. In brief, we found that beginning in 1951 Baird and his Foundations engaged in activities which may have involved violations of the securities laws as more particularly set out below:

(1) The Foundations bought and sold securities for their own accounts and for the accounts of others. Such purchases and sales may have been made without compliance with the broker-dealer requirements imposed by Section 15(a) of the Exchange Act;

(2) The Foundations have extended credit to "customers" in the purchase of securities. Such extensions of credit may have violated the margin requirements as provided by Section 7(c) (1) of the Exchange Act;

(3) The Foundations have participated with issuers and controlling persons in the primary and secondary distribution of securities without registration under Section 5 of the Securities Act, which distributions may have been in violation thereof;

(4) The Foundations have participated with others in large acquisitions leading to the control of listed companies. These transactions may have been effected in violation of the disclosure requirements of Sections 10(b), 13 and 14 of the Exchange Act in connection with (a) stock purchases, (b) the filing of periodic reports and (c) the use of proxy materials; and

(5) The Foundations may have acquired and disposed of listed securities without filing ownership reports as required by Section 16(a) of the Exchange Act.

Based on the above, on March 5, 1964, the Commission directed the staff to inquire into these matters and authorized the use of its subpoena power for such purposes.

At the outset it became quite clear that in order to resolve the questions raised by our preliminary analysis, it would be necessary that our investigation be quite comprehensive. This meant that there would have to be a detailed analysis of the Foundations' books and records and a very extensive field investigation. This requires subpoenaing a vast amount of records and interviewing many witnesses from all parts of the United States.

At the beginning of our investigation Mr. David G. Baird was subpoenaed to testify and produce certain of his own records and those of the Foundations. Mr. Baird's initial testimony proved rather inconclusive and it is anticipated that he will be recalled to further testify.

To obtain the background and a clear understanding of the many complicated transactions we were concerned with, it was necessary to examine and analyze the financial records of the Foundations for a number of past years extending back to the early 1950's. The dimensions of this work can be somewhat understood by the number of transactions involved. Since 1951 the Winfield Baird Foundation alone has had securities transactions with over 200 different persons and corporations and over 40 broker-dealer firms. In addition, the Foundation has purchased securities directly from over 40 issuers. In 1956 alone the Winfield Baird Foundation had transactions in over 130 different securities totaling \$21,711,221 in purchases and \$11,581,699 in sales. In 1954 through 1963 the same Foundation purchased \$87,877,472 worth of securities, and sales during this period were \$86,000,299.

We have analyzed most of the more significant securities transactions of the Foundations. An important objective of this work is to segregate and identify (a) wash donations (inter-fund and individual donors); (b) amount of ordinary income disguised as capital gains (profit-sharing arrangements); (c) securities owned by the Foundations from securities carried for the accounts of others (capital gains versus loans); and (d) details of bank borrowing (margin requirements).

We believe that this information will be particularly helpful in determining whether the Foundations have been conducting directly or indirectly a securities business as defined in our statutes. Because of the complexity of the transactions, certain inaccuracies in the records and in some instances their incompleteness, this work of necessity is quite time consuming.

We also have given consideration to certain recent transactions of the Foundations. We understand that under an arrangement with the Internal Revenue Service the Foundations are to wind up their

affairs by December 1965. It appears that during the latter part of 1963 the Foundations transferred certain of their securities to the Maxwell Fund, Inc., a newly formed profit corporation organized by Baird and wholly owned by the Foundations.<sup>1</sup> Maxwell Fund officials said the purpose of the transfer is to assist the Foundations in disposing of their securities holdings which do not have a ready market and which in all likelihood could not be liquidated without substantial losses by December 1965. Our examination, however, indicates that many of the securities transferred from the Foundations to Maxwell Fund appear to have a ready market and that some have already been sold, although the proceeds have not been remitted to the Foundations.<sup>2</sup> It also appears that the Maxwell Fund has been buying and selling securities for its own account and for the accounts of others and has been generally engaging in, although on a smaller scale, the same kinds of activities as the Foundations.

In carrying out our field work we have been adhering to a strict time schedule. To date over 40 witnesses have been questioned, some informally and others on the record. Witnesses already have been seen in New York, New York; Philadelphia, Pennsylvania; Boston, Massachusetts; Cleveland, Ohio; Chicago, Illinois; Los Angeles, California; and Houston, Texas, and more remain to be questioned.

Our present schedule contemplates completion of our field work by the end of December 1964. Thus should we be able to complete our entire investigation by that time, we anticipate a report could be made to the Commission sometime in early 1965.

<sup>1</sup> The records of the Foundations at this time do not show the transfers of those securities and Maxwell Fund's records indicate that it gave no consideration for them.

<sup>2</sup> A Maxwell Fund spokesman explained that no proceeds received from the sale of these securities will be remitted until Maxwell Fund had wound up its business.

Exhibit 54

INFORMATION SUBMITTED TO THE SUBCOMMITTEE BY THE BAIRD FOUNDATIONS REGARDING THEIR TRANSFER OF ASSETS TO THE MAXWELL FUND, INC.

The Maxwell Fund, Inc., 67 Broad St., New York City, is an investment company, organized on October 7, 1963, in the state of New York.

The officers and directors of Maxwell Fund, Inc., are as follows: David G. Baird, President; Norman H. Raskin, Vice President; Wm. D. Brome, Vice President; Louis Morowitz, Secretary-Treasurer. All are employees of Baird & Company, 67 Broad St., New York City.

On January 2, 1964, 100 shares of common stock of Maxwell Fund, Inc., were issued.

From inception to December 7, 1964, the David, Josephine & Winfield Baird Foundation has owned 11 shares (11 percent) of the stock, with carrying value and market value as follows:

<i>Carrying value January 2, 1964</i>	<i>Carrying value December 7, 1964</i>
\$332,980.03	\$295,967.11
<i>Market value January 2, 1964</i>	<i>Market value December 7, 1964</i>
\$381,011.00	\$352,304.75

From inception to December 7, 1964, the Winfield Baird Foundation has owned 89 shares (89 percent) of the common stock, with carrying value and market value as follows:

<i>Carrying value January 2, 1964</i>	<i>Carrying value December 7, 1964</i>
\$2,684,159.21	\$2,394,642.97
<i>Market value January 2, 1964</i>	<i>Market value December 7, 1964</i>
\$2,872,235.38	\$2,850,465.73

The assets transferred to the Maxwell Fund, Inc. (January 2, 1964) by the two Baird Foundations are shown below. Certain information, respecting the transfer of assets, has not as yet been submitted to the Subcommittee by the Baird Foundations, i.e.—gross sales price; expense of sale; and seller's gain or loss.

## List of assets transferred

Seller	Number of shares	Class of stock	Issuing company	Foundation's carrying value 12/31/63	Market value at 12/31/63*
DJ&WBF <sup>1</sup>	2,500	Common	American Book Stratford	\$22,983.03	\$14,687.50
	700	do	American Shipbuilding	13,482.00	7,787.50
	1,500	do	Dulany Industries	8,250.00	5,062.50
	7,800	do	Federal Resources	11,212.50	15,600.00
	1,562	do	Interstate Bakeries	8,750.00	36,316.50
	10,000	Capital	Skyline Oil	40,000.00	100,000.00
	9,500	do	Staurock Uranium	22,872.50	5,343.75
	2,200	do	U.S. Testing	23,192.50	25,300.00
	20,000	Common	Universal Controls	120,000.00	90,000.00
	260	do	Wilson Bros.	4,000.00	1,625.00
	4,000	do	Western Natural Gas	58,237.50	52,500.00
	700	Capital	American News	30,037.00	14,441.00
WBF <sup>2</sup>	232,700	Common	Federal Resources	496,978.75	465,400.00
	7,600	do	Croze United	35,625.00	21,850.00
	350	do	Elk Horn Coal	7,487.50	6,475.00
	2,500	do	Hilton Hotels	50,375.00	39,075.00
	10,648	do	Lincoln Printing	90,414.50	27,951.00
	7,725	do	Rapid American	88,193.15	30,900.00
	90,000	Capital	Skyline Oil	360,000.00	900,000.00
	6,500	Common	Smith & Wesson	198,250.00	214,500.00
	5,000	do	Rohr Corp.	93,711.90	81,875.00
	2,500	do	Sayre & Fisher	10,906.25	8,437.50
	103	Capital	Frank G. Shattuck	1,628.69	1,197.38
	2,900	Common	Stanley Warner	93,689.45	76,125.00
	20,000	do	Technicolor	157,400.00	372,600.00
	92,000	do	Universal Controls	561,568.70	414,000.00
	24,000	do	Wilson Bros.	203,760.00	150,000.00
	3,200	do	Western Natural Gas	52,375.00	42,000.00
	1,000	do	Winston Muss	6,330.00	2,750.00
	\$334	do	Oil Shale Corp. 4 1/2% Conv. Debs.	6,334.00	-----
Total	-----	-----	-----	2,872,044.92	3,223,799.63

<sup>1</sup> David, Josephine & Winfield Baird Foundation.<sup>2</sup> Winfield Baird Foundation.<sup>3</sup> As submitted to the Subcommittee by the Baird Foundations.